

Panaji, 5th September, 2008 (Bhadra 14, 1930)

SERIES I No. 23

OFFICIAL GOVERNMENT OF GOA GAZETTE



NOTE

There is one Extraordinary issue to the Official Gazette, Series I No. 22 dated 28-8-2008 namely, Extraordinary dated 30-8-2008 from pages 757 to 762 regarding Notifications from Department of Law & Judiciary (Legal Affairs Division).

INDEX

Department	Notifications	Subject	Pages
1. Goa Legislature Secretariat	Bill Nos. LA/Legn/2008/1937, 1938, 1939, 1940, 1941, 1942, 1943, 36, 1852, 1853, 1861, 1862, 1894.	The Goa Appropriation (No. 3) Bill, 2008 —do— (No. 4) —do— (No. 5) —do— (No. 6) —do— (No. 7) —do— (No. 8) —do— (No. 9) The Goa Succession, Special Notaries and Inventory Proceeding Bill, 2008.	763 766 768 770 771 773 775 776
2. Printing & Stationery —do— —do—	Order No. 13/7/07/STN-GPP Not. No. GPS/5-14/Revised-Rates/1363 Public Notice	Extraordinaries Revised Subscription Rates	908 909 909
3. Power	No. CEE/Accts-4(Bud)/Part file/2469	Scheme for Infrastructure Development through Electricity duty	907

GOVERNMENT OF GOA

Goa Legislature Secretariat

LA/LEGN/2008/1937

The following Bill which was introduced in the Legislative Assembly of the State of Goa on 29-8-2008 is hereby published for general information in pursuance of Rule - 138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Appropriation (No. 3) Bill, 2008

(Bill No. 21 of 2008)

A

BILL

to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State of Goa for the services and purposes of the financial year 2008-09.

Be it enacted by the Legislative Assembly of Goa in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title.*— This Act may be called the Goa Appropriation (No. 3) Act, 2008.

2. *Issue of Rs. 4686,26,65,000 out of the Consolidated Fund of the State of Goa for the financial year 2008-09.*— From and out of the Consolidated Fund of the State of Goa, there may be paid and applied sums not exceeding those specified in column (5) of the Schedule of this Act amounting in the aggregate to the sums of *Four Thousand Six hundred eighty six crore, twenty six lakh and sixty five thousand rupees* towards defraying the several charges which will arise for payment during the financial year 2008-2009 in respect of the services and purposes specified in column (2) of the said Schedule.

3. *Appropriation.*— The sums authorised to be paid and applied from and out of the Consolidated Fund of the State of Goa under this Act, shall be appropriated for the services and purposes expressed in the Schedule to this Act in relation to the said financial year.

SCHEDULE

(See sections 2 and 3)

(Rs. in lakhs)

Demand No.	Services and purposes	Sums not exceeding		Total
		Voted by Assembly	Charged on the Consolidated Fund of the State of Goa	
(1)	(2)	(3)	(4)	(5)
01	Legislature Secretariat	892.00	40.50	932.50
A1	Raj Bhavan (<i>Charged</i>)	—	290.00	290.00
02	General Administration and Co-ordination	2058.60	—	2058.60
03	District and Sessions Court, North Goa	555.05	—	555.05
04	District and Sessions Court, South Goa	506.35	—	506.35
05	Prosecution	155.90	—	155.90
06	Election Office	248.85	—	248.85
07	Settlement and Land Records	887.20	—	887.20
08	Treasury and Accounts Administration, North Goa	30873.61	—	30873.61
09	Treasury and Accounts Administration, South Goa	145.75	—	145.75
A2	Debt Services (<i>Charged</i>)	6699.23	77853.77	84553.00
10	Notary Services	319.70	—	319.70
11	Excise	447.50	—	447.50
12	Commercial Taxes	771.65	—	771.65
13	Transport	2805.60	—	2805.60
A3	Goa Public Service Commission (<i>Charged</i>)	—	111.50	111.50
14	Goa Sadan	143.00	—	143.00
15	Collectorate, North Goa	817.55	—	817.55
16	Collectorate, South Goa	1587.75	—	1587.75
17	Police	10720.85	—	10720.85
18	Jails	1678.45	—	1678.45
19	Industries, Trade and Commerce	2163.97	—	2163.97
20	Printing and Stationery	441.60	—	441.60
21	Public Works	61381.61	0.10	61381.71
22	Vigilance	73.55	—	73.55
23	Home	262.30	—	262.30
25	Home Guards and Civil Defence	266.12	—	266.12

<i>(Rs. in lakhs)</i>				
(1)	(2)	(3)	(4)	(5)
26	Fire and Emergency Services	869.90	—	869.90
27	Official Language	138.42	—	138.42
28	Administrative Tribunal	52.50	—	52.50
29	Public Grievances	15.00	—	15.00
30	Small Savings and Lotteries	649.90	—	649.90
31	Panchayats	6327.85	—	6327.85
32	Finance	11803.00	—	11803.00
33	Revenue	583.00	—	583.00
34	School Education	33853.76	—	33853.76
35	Higher Education	5512.50	—	5512.50
36	Technical Education	707.00	—	707.00
37	Government Polytechnic, Panaji	653.70	—	653.70
38	Government Polytechnic, Bicholim	248.50	—	248.50
39	Government Polytechnic, Curchorem	149.00	—	149.00
40	Goa College of Engineering	2073.35	—	2073.35
41	Goa Architecture College	257.10	—	257.10
42	Sports and Youth Affairs	2703.95	—	2703.95
43	Art and Culture	3233.42	—	3233.42
44	Goa College of Art	154.05	—	154.05
45	Archives and Archaeology	1554.00	—	1554.00
46	Museum	146.75	—	146.75
47	Goa Medical College	7782.15	—	7782.15
48	Health Services	8923.49	—	8923.49
49	Institute of Psychiatry and Human Behaviour	666.90	—	666.90
50	Goa College of Pharmacy	282.20	—	282.20
51	Goa Dental College	708.50	—	708.50
52	Labour	950.25	—	950.25
53	Food and Drugs Administration	211.05	—	211.05
54	Town and Country Planning	890.25	—	890.25
55	Municipal Administration	11873.00	—	11873.00
56	Information and Publicity	1229.00	—	1229.00
57	Social Welfare	13798.50	—	13798.50
58	Women and Child Development	2316.20	—	2316.20
59	Factories and Boilers	147.24	—	147.24
60	Employment	78.45	—	78.45
61	Craftsmen Training	2028.50	—	2028.50
62	Law	600.80	—	600.80
63	Rajya Sainik Board	29.98	—	29.98
64	Agriculture	3170.53	—	3170.53
65	Animal Husbandry and Veterinary Services	2188.48	—	2188.48
66	Fisheries	1692.74	—	1692.74
67	Ports Administration	903.86	—	903.86
68	Forests	1858.40	—	1858.40
70	Civil Supplies	3576.00	—	3576.00
71	Co-operation	1498.17	—	1498.17
72	Science, Technology and Environment	611.00	—	611.00
73	State Election Commission	86.40	—	86.40
74	Water Resources	22716.80	—	22716.80
75	Planning, Statistics & Evaluation	304.54	—	304.54
76	Electricity	89097.36	—	89097.36
77	River Navigation	1381.00	—	1381.00
78	Tourism	3838.10	—	3838.10
79	Goa Gazetteer	19.50	—	19.50
80	Legal Metrology	123.50	—	123.50
82	Information Technology	6000.00	—	6000.00
83	Mines	157.55	—	157.55
TOTAL		390330.78	78295.87	468626.65

Statement of Objects and Reasons

The Budget for the year 2008 - 2009 was presented to the Legislative Assembly on 26th March, 2008. The Demands for Grants have since been discussed and voted by the Assembly. The Appropriation Bill is, therefore introduced in accordance with the provisions of Article 204 of the Constitution to provide for appropriation out of the Consolidated Fund of the State of Goa of the moneys required for the services during the financial year 2008 - 2009.

Porvorim,
..... August, 2008.

DIGAMBAR KAMAT,
Chief Minister.

Governor's Recommendation

The Governor has, in pursuance of Article 207 of the Constitution of India, recommended to the Legislative Assembly, the introduction and consideration of the Goa Appropriation (No. 3) Bill, 2008.

LA/LEGN/2008/1938

The following Bill which was introduced in the Legislative Assembly of the State of Goa on 29-8-2008 is hereby published for general information in pursuance of Rule - 138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

**The Goa Appropriation (No. 4)
Bill, 2008**

(Bill No. 22 of 2008)

A

BILL

to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Goa for the services and purposes of the financial year 2008-09.

Be it enacted by the Legislative Assembly of Goa in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title.*— This Act may be called the Goa Appropriation (No. 4) Act, 2008.

2. *Issue of Rs. 50,11,60,000/- out of the Consolidated Fund of the State of Goa for the financial year 2008-09.*— From and out of the Consolidated Fund of the State of Goa, there may be paid and applied sums not exceeding those specified in column (5) of the Schedule to this Act amounting in the aggregate to the sums of Fifty crores eleven lakh and sixty thousand rupees towards defraying the several charges which will come in the course of payment

during the financial year 2008-09 in respect of the services and purposes specified in column (2) of the said Schedule.

3. *Appropriation.*— The sums authorised to be paid and applied from and out of the Consolidated Fund of the State of Goa under this Act, shall be appropriated for the services and purposes expressed in the Schedule to this Act in relation to the said financial year.

SCHEDULE
(See sections 2 and 3)

(Rs. in lakhs)

Demand No.	Services and purposes	Voted by Assembly	Sums not exceeding	
			Charged on the Consolidated Fund of the State of Goa	Total
(1)	(2)	(3)	(4)	(5)
02	General Administration and Co-ordination	15.54	—	15.54
05	Prosecution	1.00	—	1.00
09	Treasury and Accounts Administration, South Goa	5.80	—	5.80
13	Transport	300.00	—	300.00
19	Industries, Trade and Commerce... ..	3.73	—	3.73
20	Printing and Stationery	20.00	—	20.00
21	Public Works	3.30	0.73	4.03
26	Fire and Emergency Service... ..	—	1.77	1.77
27	Official Language	50.00	—	50.00
30	Small Saving and Lotteries... ..	190.00	114.38	304.38
31	Panchayats	3.57	—	3.57
34	School Education	250.00	—	250.00
35	Higher Education	859.00	22.19	881.19
37	Government Polytechnic, Panaji... ..	25.00	—	25.00
40	Goa College of Engineering... ..	—	0.05	0.05
42	Sports and Youth Affairs	363.00	—	363.00
43	Art and Culture	15.00	—	15.00
47	Goa Medical College	650.00	—	650.00
48	Health Services	400.00	—	400.00
52	Labour	2.00	—	2.00
54	Town and Country Planning	—	56.11	56.11
57	Social Welfare	4.26	—	4.26
58	Women and Child Development... ..	5.00	—	5.00
62	Law	10.00	—	10.00
63	Rajya Sainik Board... ..	12.00	—	12.00
64	Agriculture	412.00	—	412.00
65	Animal Husbandry and Veterinary Services... ..	22.00	—	22.00
67	Ports Administration	50.00	—	50.00
68	Forests	52.00	—	52.00
70	Civil Supplies	1043.00	—	1043.00
71	Co-operation	48.00	—	48.00
76	Electricity	—	1.17	1.17
TOTAL		4815.20	196.40	5011.60

Statement of Objects and Reasons

The Supplementary Demands Grants for the year 2008 - 2009 (First Batch) has been presented to the Legislative

Assembly. This Bill is introduced in pursuance of Article 204 read Article 205 of the Constitution of India to provide for appropriation certain further sums from and out of the Consolidated Fund of the State of Goa, to meet the expenditure on certain services, granted by the Legislative Assembly for those services.

Porvorim,
..... August, 2008.

SHRI DIGAMBAR KAMAT,
Chief Minister.

Governor's Recommendation

The Governor has, in pursuance of Article 207 of the Constitution of India, recommended to the Legislative Assembly, the introduction and consideration of the Goa Appropriation (No. 4) Bill, 2008.

LA/LEGN/2008/1939

The following Bill which was introduced in the Legislative Assembly of the State of Goa on 29-8-2008 is hereby published for general information in pursuance of Rule - 138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Appropriation (No. 5) Bill, 2008
(Bill No. 23 of 2008)

A

BILL

to provide for the authorisation of appropriation of moneys from and out of the Consolidated Fund of the State of Goa to meet the amounts spent on certain services during the year 1998-99 in excess of the amounts granted for those services and for that period.

Be it enacted by the Legislative Assembly of Goa in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title.*— This Act may be called the Goa Appropriation (No. 5) Act, 2008.

2. *Issue of Rs. 1,20,64,265 out of the Consolidated Fund of the State of Goa to meet excess expenditure for the year 1998-99.*— From and out of the Consolidated Fund of the State of Goa, the sums specified in column (5) of the Schedule hereto amounting in the aggregate to the sum of one crore twenty lakhs sixty four thousand two hundred sixty five rupees shall be deemed to have been authorised to be paid and applied to meet the amount spent for defraying the charges in respect of

services specified in column (2) of the said Schedule for the year 1998-99 in excess of the amounts granted for those services and for that period.

3. *Appropriation.*— The sums deemed to have been authorised to be paid and applied from and out of the Consolidated Fund of the State of Goa under this Act, shall be deemed to have been appropriated for the services and purposes expressed in the said Schedule for the year 1998-99.

SCHEDULE

(See sections 2 and 3)

(Rs. in lakhs)

Demand No.	Services and purposes	Voted by Assembly	Sums not exceeding	
			Charged on the Consolidated Fund of the State of Goa	Total Excess over Grants/ Appropriation
(1)	(2)	(3)	(4)	(5)
		Rs.	Rs.	Rs.
7	Treasuries & Accounts Administration	1,03,20,643/-		1,03,20,643/-
32	Higher Education		1/-	1/-
33	Technical Education	1,78,595/-		1,78,595/-
34	Government Polytechnic		12,84,922/-	12,84,922/-
37	Sports & Youth Affairs	78,226/-		78,226/-
46	Labour & Employment	59,625/-		59,625/-
53	Factories & Boilers	79,743/-		79,743/-
59	Animal Husbandry & Veterinary Services	62,510/-		62,510/-
	GRAND TOTAL	1,07,79,342/-	12,84,923/-	1,20,64,265

Statement of Objects and Reasons

The Demands for Excess Grants for the expenditure of this State for the year 1998 - 99 has been presented to the Legislative Assembly. The Goa Appropriation (No. 5) Bill, 2008 is, therefore introduced in pursuance of Article 204 read with Article 205 of the Constitution of India to provide for authorisation of appropriation of moneys out of the Consolidated Fund of the State of Goa, to meet the amount spent on certain services, during the year 1998-99 in excess of the amount granted for those services and for that period.

Porvorim,
..... August, 2008.

DIGAMBAR KAMAT,
Chief Minister.

Governor's Recommendation

The Governor has, in pursuance of Article 207 of the Constitution of India, recommended to the Legislative Assembly, the introduction and consideration of the Goa Appropriation (No. 5) Bill, 2008.

LA/LEGN/2008/1940

The following Bill which was introduced in the Legislative Assembly of the State of Goa on 29-8-2008 is hereby published for general information in pursuance of Rule - 138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Appropriation (No. 6) Bill, 2008

(Bill No. 24 of 2008)

A

BILL

to provide for the authorisation of appropriation of moneys from and out of the Consolidated Fund of the State of Goa to meet the amounts spent on certain services during the year 1999-2000 in excess of the amounts granted for those services and for that period.

Be it enacted by the Legislative Assembly of Goa in the Fifty-ninth Year of the Republic of India as follows:-

1. Short title.— This Act may be called the Goa Appropriation (No. 6) Act, 2008.

2. Issue of Rs. 39,00,552 out of the Consolidated Fund of the State of Goa to meet excess expenditure for the year 1999-2000.— From and out of the Consolidated Fund of the State of Goa, the sums specified in column (5) of the Schedule hereto amounting in the aggregate to the sum of thirty nine lakhs five hundred fifty two rupees shall be deemed to have been authorised to be paid and applied to meet the amount spent for defraying the charges in respect of services specified in column (2) of the said Schedule for the year 1999-2000 in excess of the amounts granted for those services and for that period.

3. Appropriation.— The sums deemed to have been authorised to be paid and applied from and out of the Consolidated Fund of the State of Goa under this Act, shall be deemed to have been appropriated for the services and purposes expressed in the said Schedule for the year 1999-2000.

SCHEDULE

(See sections 2 and 3)

(Rs. in lakhs)

Demand No.	Services and purposes	Sums not exceeding		
		Voted by Assembly	Charged on the Consolidated Fund of the State of Goa	Total Excess over Grants/ /Appropriation
(1)	(2)	(3)	(4)	(5)
		Rs.	Rs.	Rs.
9	Treasury & Accounts Administration (South Goa)	9,870/-		9,870/-
27	Evacuee Property	63,918/-		63,918/-
40	Goa College of Engineering		1,21,356/-	1,21,356/-
42	Sports & Youth Affairs	36,55,897/-		36,55,897/-
46	Museum	1,500/-		1,500/-
58	Women & Child Development	48,011/-		48,011/-
	GRAND TOTAL	37,79,196/-	1,21,356/-	39,00,552/-

Statement of Objects and Reasons

The Demands for Excess Grants for the expenditure of this State for the year 1999 - 2000 has been presented to the Legislative Assembly. The Goa Appropriation (No. 6) Bill, 2008 is, therefore introduced in pursuance of Article 204 read Article 205 of the Constitution of India to provide for authorisation of appropriation of moneys out of the Consolidated Fund of the State of Goa, to meet the amount spent on certain services during the year 1999-2000 in excess of the amount granted for those services and for that period.

Porvorim,
..... August, 2008.

DIGAMBAR KAMAT,
Chief Minister.

Governor's Recommendation

The Governor has, in pursuance of Article 207 of the Constitution of India, recommended to the Legislative Assembly, the introduction and consideration of the Goa Appropriation (No. 6) Bill, 2008.

LA/LEGN/2008/1941

The following Bill which was introduced in the Legislative Assembly of the State of Goa on 29-8-2008 is hereby published for general information in pursuance of Rule - 138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Appropriation (No. 7) Bill, 2008

(Bill No. 25 of 2008)

A

BILL

to provide for the authorisation of appropriation of moneys from and out of the Consolidated Fund of the State of Goa to meet the amounts spent on certain services during the year 2000-2001 in excess of the amounts granted for those services and for that period.

Be it enacted by the Legislative Assembly of Goa in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title.*— This Act may be called the Goa Appropriation (No. 7) Act, 2008.

2. *Issue of Rs. 14,78,89,477 out of the Consolidated Fund of the State of Goa to meet excess expenditure for the year 2000-2001.*— From and out of the Consolidated Fund of the State of Goa, the sums specified in column (5) of the Schedule hereto amounting in the aggregate to the sum of fourteen crores seventy eight lakhs eighty nine thousand four hundred seventy seven rupees shall be deemed to have been authorised to be paid and applied to meet the amount spent for defraying the charges in respect of services specified in column (2) of the said Schedule for the year 2000-2001 in excess of the amounts granted for those services and for that period.

3. *Appropriation.*— The sums deemed to have been authorised to be paid and applied from and out of the Consolidated Fund of the State of Goa under this Act, shall be deemed to have been appropriated for the services and purposes expressed in the said Schedule for the year 2000-2001.

SCHEDULE

(See sections 2 and 3)

(Rs. in lakhs)

Demand No.	Services and purposes	Sums not exceeding		
		Voted by Assembly	Charged on the Consolidated Fund of the State of Goa	Total Excess over Grants/ /Appropriation
(1)	(2)	(3)	(4)	(5)
		Rs.	Rs.	Rs.
A	Appropriation – Debt Services		12,67,76,070/-	12,67,76,070/-
8	Treasury & Accounts Administration (North Goa)	2,09,85,510/-		2,09,85,510/-
37	Government Polytechnic	84,109/-		84,109/-
44	Goa College of Art	7,249/-		7,249/-
58	Women & Child Development	36,539/-		36,539/-
GRAND TOTAL		2,11,13,407/-	12,67,76,070/-	14,78,89,477/-

Statement of Objects and Reasons

The Demands for Excess Grants for the expenditure of this State for the year 2000 - 2001 has been presented to the Legislative Assembly. The Goa Appropriation (No. 7) Bill, 2008 is, therefore introduced in pursuance of Article 204 read Article 205 of the Constitution of India to provide for authorisation of appropriation of moneys out of the Consolidated Fund of the State of Goa, to meet the amount spent on certain services during the year 2000-2001 in excess of the amount granted for those services and for that period.

Porvorim,
..... August, 2008.

DIGAMBAR KAMAT,
Chief Minister.

Governor's Recommendation

The Governor has, in pursuance of Article 207 of the Constitution of India, recommended to the Legislative Assembly, the introduction and consideration of the Goa Appropriation (No. 7) Bill, 2008.

LA/LEGN/2008/1942

The following Bill which was introduced in the Legislative Assembly of the State of Goa on 29-8-2008 is hereby published for general information in pursuance of Rule - 138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Appropriation (No. 8) Bill, 2008
(Bill No. 26 of 2008)

A

BILL

to provide for the authorisation of appropriation of moneys from and out of the Consolidated Fund of the State of Goa to meet the amounts spent on certain services during the year 2001-2002 in excess of the amounts granted for those services and for that period.

Be it enacted by the Legislative Assembly of Goa in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title.*— This Act may be called the Goa Appropriation (No. 8) Act, 2008.

2. *Issue of Rs. 3,07,91,51,663 out of the Consolidated Fund of the State of Goa to meet excess expenditure for the year 2001-2002.*— From and out of the Consolidated Fund of the State of Goa, the sums specified in column (5) of the Schedule hereto amounting in the aggregate to the sum of three hundred and

seven crores ninty one lakhs fifty one thousand six hundred sixty three rupees shall be deemed to have been authorised to be paid and applied to meet the amount spent for defraying the charges in respect of services specified in column (2) of the said Schedule for the year 2001-2002 in excess of the amounts granted for those services and for that period.

3. *Appropriation.*— The sums deemed to have been authorised to be paid and applied from and out of the Consolidated Fund of the State of Goa under this Act, shall be deemed to have been appropriated for the services and purposes expressed in the said Schedule for the year 2001-2002.

SCHEDULE

(See sections 2 and 3)

(Rs. in lakhs)

Demand No.	Services and purposes	Voted by Assembly	Sums not exceeding	
			Charged on the Consolidated Fund of the State of Goa	Total Excess over Grants/ /Appropriation
(1)	(2)	(3)	(4)	(5)
		Rs.	Rs.	Rs.
A2	Appropriation- Debt Services (Capital)	—	3,07,89,35,841/-	3,07,89,35,841/-
44	Goa College of Art	43,500/-		43,500/-
58	Women & Child Development	1,72,322/-		1,72,322/-
GRAND TOTAL		2,15,822/-	3,07,89,35,841/-	3,07,91,51,663/-

Statement of Objects and Reasons

The Demands for Excess Grants for the expenditure of this State for the year 2001 - 2002 has been presented to the Legislative Assembly. The Goa Appropriation (No. 8) Bill, 2008 is, therefore introduced in pursuance of Article 204 read Article 205 of the Constitution of India to provide for authorisation of appropriation of moneys out of the Consolidated Fund of the State of Goa, to meet the amount spent on certain services during the year 2001-2002 in excess of the amount granted for those services and for that period.

Porvorim,
..... August, 2008.

SHRI DIGAMBAR KAMAT,
Chief Minister.

Governor's Recommendation

The Governor has, in pursuance of Article 207 of the Constitution of India, recommended to the Legislative Assembly, the introduction and consideration of the Goa Appropriation (No. 8) Bill, 2008.

LA/LEGN/2008/1943

The following Bill which was introduced in the Legislative Assembly of the State of Goa on 29-8-2008 is hereby published for general information in pursuance of Rule - 138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Appropriation (No. 9) Bill, 2008

(Bill No. 27 of 2008)

A

BILL

to provide for the authorisation of appropriation of moneys from and out of the Consolidated Fund of the State of Goa to meet the amounts spent on certain services during the year 2002-2003 in excess of the amounts granted for those services and for that period.

Be it enacted by the Legislative Assembly of Goa in the Fifty-ninth Year of the Republic of India as follows:—

1. Short title.— This Act may be called the Goa Appropriation (No. 9) Act, 2008.

2. Issue of Rs. 6,75,32,68,991 out of the Consolidated Fund of the State of Goa to meet excess expenditure for the year 2002-2003.— From and out of the Consolidated Fund of the State of Goa, the sums specified in column (5) of the Schedule hereto amounting in the aggregate to the sum of six hundred and seventy five crores thirty two lakhs sixty eight thousand nine hundred ninety one rupees shall be deemed to have been authorised to be paid and applied to meet the amount spent for defraying the charges in respect of services specified in column (2) of the said Schedule for the year 2002-2003 in excess of the amounts granted for those services and for that period.

3. Appropriation.— The sums deemed to have been authorised to be paid and applied from and out of the Consolidated Fund of the State of Goa under this Act, shall be deemed to have been appropriated for the services and purposes expressed in the said Schedule for the year 2002-2003.

SCHEDULE

(See sections 2 and 3)

(Rs. in lakhs)

Demand No.	Services and purposes	Voted by Assembly	Sums not exceeding	
			Charged on the Consolidated Fund of the State of Goa	Total Excess over Grants/ Appropriation
(1)	(2)	(3)	(4)	(5)
		Rs.	Rs.	Rs.
A2	Appropriation – Debt		6,75,32,57,966/-	6,75,32,57,966/-
50	Goa College of Pharmacy	11,025/-		11,025/-
	GRAND TOTAL	11,025/-	6,75,32,57,966/-	6,75,32,68,991/-

Statement of Objects and Reasons

The Demands for Excess Grants for the expenditure of this State for the year 2002 - 2003 has been presented to the Legislative Assembly. The Goa Appropriation (No. 9) Bill, 2008 is, therefore introduced in pursuance of Article 204 read Article 205 of the Constitution of India to provide for authorisation of appropriation of moneys out of the Consolidated Fund of the State of Goa, to meet the amount spent on certain services during the year 2002-2003 in excess of the amount granted for those services and for that period.

Porvorim,
..... August, 2008.

SHRI DIGAMBAR KAMAT,
Chief Minister.

Governor's Recommendation

The Governor has, in pursuance of Article 207 of the Constitution of India, recommended to the Legislative Assembly, the introduction and consideration of the Goa Appropriation (No. 9) Bill, 2008.

LA/LEGN/2008/1936

The following Bill which was introduced in the Legislative Assembly of the State of Goa on 29-8-2008 is hereby published for general information in pursuance of Rule-138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Succession, Special Notaries
and Inventory Proceeding Bill, 2008

(Bill No. 36 of 2008)

INDEX
PART I

GENERAL PROVISIONS

- Section 1. Short title, extent, commencement and application.
- Section 2. Definitions

PART II

Succession

CHAPTER I

PRELIMINARY PROVISIONS

- Section 3. Succession
- Section 4. Types of Succession:

- Section 5. Types of successors: heirs and legatees
- Section 6. Inheritance
- Section 7. Simultaneous death of the estate leaver and the successor

CHAPTER II

OPENING OF THE INHERITANCE, COMPETENCE TO SUCCEED AND TRANSMISSION OF OWNERSHIP AND POSSESSION

- Section 8. Opening of the succession
- Section 9. Competence to succeed
- Section 10. Incompetence to succeed by reason of unworthiness to succeed
- Section 11. Consequences of declaration of unworthiness to succeed
- Section 12. Re-acquisition of competence to succeed
- Section 13. When the ownership and possession is transmitted

CHAPTER III

RIGHT TO PARTITION THE INHERITANCE

- Section 14. Partition by inventory
- Section 15. Partition by deed
- Section 16. Inheritance is indivisible till partition is effected
- Section 17. Consequence of transfer of specific asset of inheritance
- Section 18. Right of co-heir to claim the inheritance in its entirety
- Section 19. Right to demand partition
- Section 20. Partition of assets of joint family
- Section 21. Period of limitation to institute inventory proceeding.

CHAPTER IV

ACCEPTANCE AND RENUNCIATION OF THE INHERITANCE

- Section 22. Acceptance of inheritance
- Section 23. Devolution of inheritance under different titles
- Section 24. Freedom to accept or renounce
- Section 25. Nullity of restricted acceptance or renunciation
- Section 26. Capacity to accept or renounce
- Section 27. Acceptance or renunciation by one of the spouses only
- Section 28. Acceptance of inheritance left to a person under disability
- Section 29. Acceptance or renunciation of inheritance left to a deaf and dumb person
- Section 30. Form of acceptance
- Section 31. Gratuitous transfer of inheritance or share therein
- Section 32. Consequences of court decision declaring a person to be an heir
- Section 33. Absence of consensus among heirs to accept or renounce an inheritance
- Section 34. Transmission of right to accept
- Section 35. Indivisibility of renunciation

- Section 36. How renunciation is effected
- Section 37. Consequences of renunciation
- Section 38. Implications of renunciation of disposable share
- Section 39. When acceptance may be challenged
- Section 40. Subrogation by creditor
- Section 41. Prohibition to renounce
- Section 42. Retroactivity of acceptance or renunciation
- Section 43. Inheritance at abeyance
- Section 44. Temporary management
- Section 45. Notice to accept or renounce the inheritance

CHAPTER V

LIABILITIES OF THE INHERITANCE

- Section 46. Liabilities of the inheritance
- Section 47. Order of priorities
- Section 48. Liability of the usufructuary
- Section 49. Legacy of maintenance or lifetime pension
- Section 50. Rights and duties of the heirs in respect of the inheritance
- Section 51. Bonafide satisfaction of the legacies

CHAPTER VI

LEGAL SUCCESSION

- Section 52. When legal succession takes place and its extent
- Section 53. Order of legal succession
- Section 54. Proximity of degree
- Section 55. Succession per capita
- Section 56. Accretion upon renunciation of the inheritance
- Section 57. Degree and lines of kinship
- Section 58. Direct and collateral line
- Section 59. Types of direct line of kinship
- Section 60. How degrees are counted in the direct line
- Section 61. How degrees are counted in the collateral line
- Section 62. Incapacity to inherit by legal succession
- Section 63. Extent of incapacity

CHAPTER VII

RIGHT OF REPRESENTATION

- Section 64. Right of representation
- Section 65. Representation in the direct line
- Section 66. Representation in the collateral line
- Section 67. Right of the representatives
- Section 68. Joint representatives

CHAPTER VIII

ORDER OF SUCCESSION

SUCCESSION OF DESCENDANTS/ASCENDANTS

- Section 69. Succession of children and their descendants
- Section 70. When filiation is disputed
- Section 71. Succession per capita
- Section 72. Succession per stirpes

Succession of Ascendants

- Section 73. Succession of parents

Succession of Ascendants of the Second Degree

- Section 74. Succession of grandparents and other ascendants
- Section 75. Division per capita: Ascendants in the same degree
- Section 76. When ascendants are not in the same degree

Succession of Brothers, Sisters and their Descendants

- Section 77. Succession of brothers, sisters and their descendants

Succession of Surviving Spouse and of the Collaterals

- Section 78. Succession of surviving spouse
- Section 79. Collaterals other than brothers and their descendants

Succession of the State

- Section 80. Succession of the State
- Section 81. Rights and duties of the State
- Section 82. Prior Court order

CHAPTER IX

PREFERENTIAL RIGHT OF THE SPOUSE

- Section 83. Preferential right of habitation and use of surviving spouse

CHAPTER X

MANDATORY SUCCESSION, COLLATION AND REDUCTION

- Section 84. Disposable portion
- Section 85. Restriction on transfer by parents or grandparents
- Section 86. Disposition of specific usufruct or lifetime pension
- Section 87. In officious dispositions
- Section 88. Right of forced heir to claim reduction
- Section 89. Renunciation of right to claim reduction
- Section 90. Computation of disposable portion

Rules relating to collation

- Section 91. Collation
- Section 92. Exemption from collation
- Section 93. When is a gift deemed an advancement of the legitime
- Section 94. Collation by grandchildren
- Section 95. When parents are not bound to collate
- Section 96. Ascendant duty to collate
- Section 97. Spouses of children not bound to collate
- Section 98. Expenses to be collated

- Section 99. Collation of fruits and profits of gifted things
 Section 100. How collation is done
 Section 101. Where the value of the gifted assets exceeds the value of donee's share in the inheritance
 Section 102. On payments made
 Section 103. Family arrangement
 Section 104. Gift of community assets
 Section 105. How the shares of co-heirs are to be paid
 Section 106. When the value of the assets gifted exceeds the legitime of the donee
 Section 107. Where there are several donees
 Section 108. Dispute as regards obligation to collate
 Section 109. Assets which devolve in a preferential manner
 Section 110. Duty to collate is a charge in rem

Rules for reduction of a legacy or gift

- Section 111. Reduction of legacy or gift
 Section 112. Order of reduction
 Section 113. Partial reduction
 Section 114. Reduction of gifts inter vivos
 Section 115. Pro rata reduction
 Section 116. Reduction in respect of movables
 Section 117. Reduction of gifts of immovables
 Section 118. When immovable cannot be divided
 Section 119. When the donee may retain the gifted property
 Section 120. When immovable properties are not in possession of the donee
 Section 121. When the donee is insolvent
 Section 122. Fruits and profits in the event of reduction

CHAPTER XI

TESTAMENTARY SUCCESSION

- Section 123. Institution of heir
 Section 124. Liability of the heirs
 Section 125. Liability of the legatee
 Section 126. Apportionment of liabilities where inheritance is distributed by way of legacies only
 Section 127. Specific sum or thing bequeathed
 Section 128. Institution of heirs collectively
 Section 129. Brothers generally instituted as heirs
 Section 130. Institution of certain person and his children
 Section 131. Right to be compensated for management of inheritance distributed by way of legacies
 Section 132. Legacy of a thing subsequently acquired
 Section 133. Legacy of a thing belonging to the heir or legatee
 Section 134. Legacy of a thing which belongs only in part to the testator or to his successors
 Section 135. Restraint on marriage
 Section 136. Condition to reciprocate
 Section 137. Deferred execution of the disposition
 Section 138. Ineffective dispositions
 Section 139. Legacy in the alternative

- Section 140. Indivisibility of the disposition
 Section 141. Supervenience of descendants
 Section 142. Effect of supervenient children predeceasing
 Section 143. Legacy of a pledged thing
 Section 144. Legacy of thing ascertainable at the place where found
 Section 145. Legacy of debt not fallen due
 Section 146. Legacy made to the creditor of testator
 Section 147. Unconditional legacy
 Section 148. Choice of legacy of a generic thing
 Section 149. Heir's right to select
 Section 150. Transmission of right to choose
 Section 151. Legacy for maintenance
 Section 152. Legacy of house with things existing in it
 Section 153. Legacy of usufruct
 Section 154. Legacy to minor
 Section 155. Legacy for charitable purposes
 Section 156. Mistake as to object or subject of the legacy
 Section 157. Delivery of legacy
 Section 158. Duty to carry out the will
 Section 159. Fruits and income of legacy
 Section 160. Legacy of periodic sums
 Section 161. Expenses for delivery of legacy
 Section 162. Manner and place of delivery
 Section 163. New acquisitions
 Section 164. Legacy of thing burdened with encumbrance in rem
 Section 165. Lien on immovable assets
 Section 166. Duty of co-heirs to compensate when the legacy consists of an asset of one co-heir only
 Section 167. Institution of heir or legacy subject to fulfillment of condition
 Section 168. Conditional legacy
 Section 169. Responsibility of the heir apparent
 Section 170. Reduction of encumbrance attached to legacy

Right of accretion

- Section 171. Right of accretion
 Section 172. Exclusion of right of accretion
 Section 173. Effects of accretion
 Section 174. Renunciation of right of accretion
 Section 175. Right to legacy

Substitutions

- Section 176. Common or direct substitution
 Section 177. Pupillary substitution
 Section 178. Quasi pupillary substitution
 Section 179. Properties which may be subject to substitution
 Section 180. Rights and duties of the substitute
 Section 181. Reciprocal substitution
 Section 182. Fide commissary substitution
 Section 183. Lapse of fidei-commissum
 Section 184. Nullity of the substitution
 Section 185. Dispositions which are not analogous to fidei-commissum
 Section 186. Deemed fidei commissum

Section 187. Encumbrances in favour of paupers, etc.
 Section 188. Irregular fidei commissum
 Section 189. Applicability to past and future fidei-commissum

Disinheritance

Section 190. Disinheritance
 Section 191. Grounds for disinheritance
 Section 192. Effects of disinheritance
 Section 193. Burden of proof
 Section 194. Failure to mention ground or irrelevant ground
 Section 195. Right to maintenance of the disinherited heir
 Section 196. Period of limitation to challenge disinheritance

CHAPTER XII

WILLS

Section 197. Concept of will
 Section 198. Will is a personal act
 Section 199. Will dependent upon instruction
 Section 200. Disposition in favour of unnamed relatives
 Section 201. Conditional disposition
 Section 202. Obstruction to fulfillment of condition
 Section 203. Reason contrary to law
 Section 204. Disposition where time for commencement or cessation of heirship is fixed
 Section 205. Will obtained by coercion, undue influence, deceit or fraud
 Section 206. Duty of authorities
 Section 207. When expressions are insufficient
 Section 208. Prohibition imposed by testator to challenge his will
 Section 209. Joint wills
 Section 210. Revocation of will
 Section 211. Implied revocation
 Section 212. Effect of will which has lapsed
 Section 213. Restoration of will
 Section 214. When testamentary dispositions lapse
 Section 215. Effect of ignorance of existence of children
 Section 216. Interpretation of wills
 Section 217. Objects contrary to law, morality or policy

Who may make a Will and acquire by Will

Section 218. Capacity to make a will
 Section 219. Incapacity to make a will
 Section 220. Restrictions on disposition of community assets
 Section 221. Restrictions on disposing of specific assets of the inheritance
 Section 222. Relative incapacity of sick person
 Section 223. Disposition in favour of a person who has rendered domestic help or care and assistance
 Section 224. Relative incapacity – Disposition in favour of guardian or manager of assets
 Section 225. Relative incapacity – Disposition by adulterous spouse

Section 226. Relative incapacity – Disposition in favour of the Special Notary
 Section 227. Extent of nullity
 Section 228. Restriction on impairment of mandatory share
 Section 229. Who may receive by will
 Section 230. Relevant time to determine capacity to acquire by will
 Section 231. Consequence of incompetence to acquire by legal succession
 Section 232. Consequences of refusal to act as executor or guardian or their removal
 Section 233. Capacity of corporate bodies
 Section 234. Fictitious disposition

Types of Wills

Section 235. Types of wills
 Section 236. Public will
 Section 237. Printed open will
 Section 238. Closed or sealed will
 Section 239. Incompetence to make a closed will
 Section 240. Failure to present the closed will
 Section 241. Fraudulent removal of will
 Section 242. Where the closed will is found open
 Section 243. Tampered or torn will
 Section 244. Presumption as to who is responsible
 Section 245. Torn will found amidst the effects of the testator
 Section 246. Wills under this Act to become operative upon death
 Section 247. Wills made outside Goa

CHAPTER XIII

MANAGEMENT OF THE INHERITANCE HEAD OF THE FAMILY

Section 248. To whom the office of head of the family belongs
 Section 249. When the guardian is appointed head of the family
 Section 250. Eldest of the spouses to be the head of the family
 Section 251. Special head of the family
 Section 252. Duty to initiate the inventory
 Section 253. When half of the income may be distributed
 Section 254. Rights and duties of the head of the family
 Section 255. Head of the family when there are only legacies
 Section 256. When the head of the family seeks exemption or is removed
 Section 257. Concealment of assets of the inheritance by the head of the family or heir
 Section 258. Fraudulent description
 Section 259. Fraudulent concealment of documents

Executor

Section 260. Executor appointed by the testator
 Section 261. Who may be executor
 Section 262. Appointment of executor by Court

- Section 263. Where the executor declines to accept the office
 Section 264. Time limit to decline appointment
 Section 265. When the executor may resign
 Section 266. Office of the executor is gratuitous
 Section 267. Impediments to become executor
 Section 268. Powers of the executor
 Section 269. General duties of the executor
 Section 270. Duty to initiate inventory
 Section 271. When the testator leaves forced heirs
 Section 272. Where the testator does not leave forced heirs
 Section 273. Time limit to carry out the will
 Section 274. Joint executors
 Section 275. Duty to render accounts
 Section 276. Office of executor not transferable or heritable
 Section 277. Accretion of remuneration
 Section 278. Expenses of the executor
 Section 279. When the executor is guilty of deceit or fraud

CHAPTER XIV

PARTITION

- Section 280. Effects of partition
 Section 281. Consequences of co-heir and moiety-holder being deprived of possession
 Section 282. Limitation for suit for damages
 Section 283. Partition done out of Court
 Section 284. Rescission in case of out of Court partition

CHAPTER XV

SUPPLEMENTAL PROVISIONS

- Section 285. Sale of share in undivided inheritance: right of pre-emption
 Section 286. Notice to moiety holder or co-heirs
 Section 287. Sham sale
 Section 288. Creation of Easement
 Section 289. Definition of usufruct
 Section 290. Constitution of usufruct
 Section 291. Extinguishment of usufruct
 Section 292. Right of the usufructuary
 Section 293. Determination of usufruct
 Section 294. Emphyteusis
 Section 295. Divisibility of the emphyteusis
 Section 296. Acts contrary to law

PART III

SPECIAL NOTARIES

CHAPTER XVI

ESTABLISHMENT OF DISTRICT SPECIAL NOTARIES AND SPECIAL NOTARIES

- Section 297. District and Sub-Districts
 Section 298. Special Notaries
 Section 299. Offices of the District Special Notary and the Special Notary
 Section 300. Absence of District Special Notary.
 Section 301. Absence of Special Notary

- Section 302. Seal of the District Special Notary and the Special Notary
 Section 303. State Special Notary
 Section 304. Qualifications

CHAPTER XVII

FUNCTIONS OF THE SPECIAL NOTARY

- Section 305. Function of the Special Notary
 Section 306. Status of the Special Notary
 Section 307. Evidentiary value of the documents drawn by the Special Notary
 Section 308. What instruments are to be drawn only by way of authentic document

CHAPTER XVIII

BOOKS, INDICES AND FIRE PROOF BOXES

- Section 309. Obligation of the State to provide books to the Special Notary
 Section 310. Books to be maintained by the Special Notary and District Special Notary
 Section 311. Requirement of the notarial books
 Section 312. Indexes to be maintained
 Section 313. Maintenance and preservation of books and other records
 Section 314. Special Notaries to allow inspection of indices and give certified copies
 Section 315. Power of the State Special Notary and District Special Notary to superintend and control Special Notaries

CHAPTER XIX

POWERS OF THE DISTRICT SPECIAL NOTARY AND SPECIAL NOTARY

- Section 316. Powers of the Special Notaries
 Section 317. Power to administer oath
 Section 318. Incompetence to act.
 Section 319. Duty of the Special Notary
 Section 320. When the Special Notary shall refuse to perform the act
 Section 321. Refusal to perform an act
 Section 322. Order of the District Special Notary
 Section 323. Suit in case of party being aggrieved by order of the District Special Notary

CHAPTER XX

AUTHENTIC INSTRUMENT IN GENERAL

- Section 324. Who may be witnesses, identifiers and certifiers
 Section 325. Requisites of authentic documents
 Section 326. How instruments are to be recorded
 Section 327. Dumb and deaf

CHAPTER XXI

PUBLIC OPEN WILL

- Section 328. Identification of the testator and his condition
 Section 329. Place, time and date of the will

- Section 330. When a plan is attached to the will
 Section 331. When the testator does not know or is unable to write
 Section 332. When the testator is deaf
 Section 333. Formalities to be complied with without break

CHAPTER XXII

PRINTED OPEN WILL

- Section 334. Printed open will

CHAPTER XXIII

CLOSED WILL

- Section 335. Presentation of closed will and approval by the Special Notary
 Section 336. Record of the approval of the closed will
 Section 337. Failure to comply with formalities
 Section 338. Delivery of the closed will
 Section 339. Custody of the closed will and its deposit with the Special Notary
 Section 340. Who may deposit the will
 Section 341. Special power of attorney for return of the will

CHAPTER XXIV

OPENING OF THE CLOSED WILL

- Section 342. Formalities to open a closed will
 Section 343. Proceedings on death of the depositor
 Section 344. Book of record

CHAPTER XXV

REGISTRATION OF THE CLOSED WILL AFTER OPENING

- Section 345. Registration of will
 Section 346. Withdrawal of sealed cover deposited under the preceding section

CHAPTER XXVI

INSTRUMENT OF DECLARATION OF HEIRSHIP

- Section 347. Declaration of heirship

CHAPTER XXVII

VOID NOTARIAL ACTS

- Section 348. Notarial acts when void.

CHAPTER XXVIII

VALIDATION OF NOTARIAL ACTS

- Section 349. Validation of notarial acts

CHAPTER XXIX

CIVIL LIABILITY OF THE SPECIAL NOTARY

- Section 350. Liability to pay damages
 Section 351. Insufficiency of stamps
 Section 352. Discretion to state the provision and accept a draft

CHAPTER XXX

CERTIFIED COPIES

- Section 353. Who may apply
 Section 354. To whom certified copy may be delivered
 Section 355. Time limit to issue certified copies
 Section 356. When a reference is made to other documents in the main instrument
 Section 357. When a reference is made to a drawing or plan in the main instrument
 Section 358. Manner in which certified copy is to be issued
 Section 359. When there are interlineations, erasures and corrections

CHAPTER XXXI

FEES

- Section 360. Fees to be fixed by the State Government
 Section 361. Publication of fees

CHAPTER XXXII

PENALTIES

- Section 362. Penalty for incorrectly recording, endorsing, copying and translating documents with intent to injure
 Section 363. Penalties for making false statements, delivering false copies or translations, false peromation and abetment
 Section 364. Thing bona fide done or refused in his official capacity by an officer acting under this Act
 Section 365. Nothing so done is invalidated by defect in appointment or procedure of appointment of an officer acting under this Act.

CHAPTER XXXIII

MISCELLANEOUS

- Section 366. Ex officio powers and acts to be done after office hours

PART IV

INVENTORY PROCEEDING

CHAPTER XXXIV

TYPES OF INVENTORY PROCEEDING

- Section 367. Mandatory Inventory
 Section 368. Optional Inventory
 Section 369. Inventory upon divorce or separation or annulment of marriage
 Section 370. Inventory where a party dies after allotment in inventory proceeding which were finally disposed of
 Section 371. Inventory upon death of the surviving spouse
 Section 372. Additional partition
 Section 373. Inventory in the event of dissolution of joint family

CHAPTER XXXV

JURISDICTION

- Section 374. Jurisdiction
Section 375. Consolidation of inventories

CHAPTER XXXVI

HEAD OF THE FAMILY

- Section 376. Petition
Section 377. Order of appointment of Head of the family
Section 378. Inquiry for appointment of head of the family
Section 379. Evidentiary value of the declaration of the head of the Family
Section 380. Rights and Duties of the Head of the family
Section 381. Concealment of assets by head of the family
Section 382. Consequences of concealment
Section 383. Consequence of giving a list of assets based on false documents
Section 384. Duration of office of head of the family
Section 385. Removal of the head of the family
Section 386. Discharge of the head of the family from holding office

CHAPTER XXXVII

HEARINGS

- Section 387. Hearing in the inventory proceeding
Section 388. Prosecution of inventory
Section 389. Proceeding in absentia
Section 390. Parties under disability
Section 391. Discharge of guardian, etc.
Section 392. Discharge or removal of guardian, etc
Section 393. Composition of the family council .
Section 394. Death of moiety holder or heir during the pendency of the proceeding
Section 395. Challenge to the maintainability of the proceeding and other objections.
Section 396. Application to be declared as interested party, legatee or creditor and to be made a party to the proceeding
Section 397. Intended sale of a share in an undivided inheritance
Section 398. Sale of share in the undivided inheritance
Section 399. Order of priority and procedure

CHAPTER XXXVIII

INITIAL LIST OF ASSETS

- Section 400. Initial list of assets
Section 401. Objections to the list of assets and other objections
Section 402. When co-heirs are called upon to give a list of assets
Section 403. Deletion of assets listed in the preliminary list.
Section 404. Disputes relating to concealment of assets.

CHAPTER XXXIX

LIABILITIES OF THE INHERITANCE

- Section 405. Payment of debts of inheritance
Section 406. Funeral expenses
Section 407. Redemption of certain encumbrances in rem
Section 408. Creditor's claim
Section 409. Debtor's denial
Section 410. Valuation
Section 411. Evaluation by officer of the Court

CHAPTER XL

FINAL LIST, CONFERENCE OF THE PARTIES AND
PAYMENT OF DEBTS

- Section 412. Final list
Section 413. Division by metes and bounds
Section 414. Objection to overvaluation, conference, application for licitation
Section 415. Who may decide on behalf of persons under disability
Section 416. Conference of the interested parties.
Section 417. Debts payable by the inheritance and mode of payment.
Section 418. Power of the Court to decide on debts
Section 419. Disagreement on the approval of debts
Section 420. Payment of debts fallen due
Section 421. When debts are approved by some of the interested parties only.
Section 422. Resolution on mode of payment of debts
Section 423. When do legatees decide on the mode of payment of debts
Section 424. Insolvency
Section 425. Emphyteusis
Section 426. Overvaluation of assets

CHAPTER XLI

LICITATION

- Section 427. Licitation of asset which is not susceptible to division without detriment
Section 428. Licitation of gifted assets
Section 429. Licitation of bequeathed asset
Section 430. When licitation is to be held
Section 431. Licitation defined
Section 432. When licitation may be annulled

CHAPTER XLII

SECOND VALUATION

- Section 433. Second Valuation
Section 434. Inofficious legacy
Section 435. Procedure for second valuation
Section 436. Proposal on mode of partition should be made
Section 437. Procedure for filling up the shares of the party

CHAPTER XLIII

CHART OF PARTITION

- Section 438. Chart of Partition
Section 439. Preliminary Chart
Section 440. Rectification
Section 441. Sortition
Section 442. Second and Third chart of partition

CHAPTER XLIV

CONFIRMATION OF PARTITION

- Section 443. Confirmation of partition
 Section 444. Costs
 Section 445. Safeguards to be observed when the assets are delivered before the order of homologation becomes final
 Section 446. Fresh partition

CHAPTER XLV

AMENDMENT AND RESCISSION OF PARTITION

- Section 447. Amendment of partition
 Section 448. Suit for amendment of partition
 Section 449. Rescission of partition
 Section 450. Settlement of share of the heir left out in the inventory
 Section 451. Finality of the decision

CHAPTER XLVI

APPEALS

- Section 452. Appeals

CHAPTER XLVII

PREVENTIVE MEASURES

- Section 453. Appointment of receiver
 Section 454. Temporary injunction

CHAPTER XLVIII

MISCELLANEOUS

- Section 455. Cause title
 Section 456. Stamp duty payable
 Section 457. Fixation of the amount of costs
 Section 458. Enforcement of order
 Section 459. Summary proceeding
 Section 460. Power to make Rules
 Section 461. Repeal and Savings

THE GOA SUCCESSION, SPECIAL NOTARIES
AND INVENTORY PROCEEDING BILL, 2008

(Bill No. 36 of 2008)

A

BILL

to consolidate and amend the law of intestate and testamentary succession, notarial law and the laws relating to partition of an inheritance and matters connected therewith.

Be it enacted by the Legislative Assembly of Goa in the Fifty-ninth Year of the Republic of India as follows:—

PART I

GENERAL PROVISIONS

1. Short title, extent, commencement and application.— (1). This Act may be called the Goa Succession, Special Notaries and Inventory Proceeding Act, 2008.

(2). It extends to the whole of the State of Goa.

(3). It shall come into force on the 90th day of its publication in the Official Gazette.

(4). It shall be applicable to—

(a) All persons who, prior to the 20th day of December, 1961, were governed by the provisions of the Civil Code of 1867 as in force in Goa and which continued in force by virtue of sub-section (1) of section 5 of the Goa, Daman and Diu (Administration) Act, 1962 (1 of 1962), as adapted by the Military Government of Goa, Daman & Diu Order No. 175/2/MG dated 31st May, 1962;

(b) any person born in Goa of parents who are governed by the provisions of the Civil Code of 1867 which is at present in force in Goa and which was in force prior to the 20th day of December, 1961;

(c) any person born outside the State of Goa of parents who were or are governed by the provisions of the said Civil Code of 1867, unless such person declares that he does not desire to be governed by the provisions of this Act at any time before the expiry of three years from the date he attains majority or before the expiry of three years from the date he comes from outside the State of Goa, before the Special Notary having office in the sub-district where such person resides;

(d) any person born in Goa of parents who are governed by the provisions of the corresponding laws in force in the rest of India provided that he chooses permanent residence in the State of Goa and he declares before the expiry of three years from the date he attains majority that he desires to be governed by this Act before the Special Notary having office in the sub district where such person resides;

(e) any person born in Goa of parents who are foreign citizens provided such person satisfies the requirements of sections 3 and 4 of the Citizenship Act, 1955 (Central Act 57 of 1955);

(f) any person born in Goa of unknown parents or of unknown nationality;

(g) any person adopted by parents who are governed by the provisions of the Civil Code of 1867 as in force in Goa or by parents to whom this Act is applicable:

Provided that a person shall not be deemed to have taken up permanent residence in Goa,—

(i) merely by reason of his residing there on account of his being appointed in the Civil, Military, Naval, Air Force service of the Government;

(ii) merely on account of his being appointed by the Government of a foreign country as its representative and residing as such in Goa in pursuance of such appointment; nor shall any other person residing with such representative as part of his family or as servant.

2. *Definitions.*— In this Act, unless the context otherwise requires,—

(a) “*absent person*” means a person who, without appointing an attorney to manage his properties, has left the place of his residence and his whereabouts are not known and is so adjudged by a competent Court;

(b) “*assets*” means properties, movable or immovable, corporeal, whether animate or inanimate, or incorporeal, unless repugnant to the context and includes liabilities;

(c) “*authentic document*” means a document drawn by a public official or with his intervention as required by law and such document constitutes proof of the veracity of the acts done by the public official and the veracity of the facts which have occurred in his presence or which he has certified and was competent to certify, unless it is proved that the document itself is fabricated or false;

(d) “*conferee*” means the person, who has to return the assets gifted to him to the mass of the inheritance for the purpose of collation;

(e) “*deaf and dumb*” means a person who is deaf and dumb and is not capable of managing his assets and is so adjudged by a competent Court;

(f) “*estate leaver*” means the person upon whose death the transmission of his estate takes place;

(g) “*forced heir*” means the heir whom the estate leaver cannot deprive of the portion of his estate reserved to such heir by law, except in cases where the law permits the estate leaver to disinherit him;

(h) “*Head of the family*” means the person who is entrusted with the duty to give the list of the assets and liabilities of an inheritance and with the management of the inheritance till the finalization of the partition;

(i) “*inofficious gift or will*” means a gift or a will made by the estate leaver which impairs the legitime of the forced heir;

(j) “*Interdict*” means a person who is declared to be incompetent to manage his assets by an order of the Court;

(k) “*inventory proceeding*” means a proceeding to partition the inheritance of a deceased person or to obtain a formal order of allotment of inheritance by a Court;

(l) “*legal or intestate succession*” means the succession which takes place by operation of law;

(m) “*liabilities*” include all debts, obligations, burdens and encumbrances;

(n) “*Matrimonial regime*” means a system of rules which govern the ownership and management of the property of married persons as between themselves and towards third parties;

(o) “*Moiety holder*” means a spouse who has a right to moiety; and right to moiety is the half-share which any of the spouses has to the common assets of the couple or to the community properties;

(p) “*Personal Representative*” includes a natural guardian, a guardian appointed by Court and a guardian appointed by parties;

(q) “*Person under disability*” means a person declared by law or by the Court as being incapable of managing his assets and includes a minor, insane person, a deaf and dumb and an absent person;

(r) “*prescribed*” means prescribed by rules;

(s) “*prodigal*” means a person who is major in age but is a habitual spendthrift or has extravagant habits and is adjudged by a Court as being incapable of managing his assets;

(t) “*renunciation or repudiation of heirship*” means the relinquishment of the inheritance made by a person entitled to inherit by succession and to succeed;

(u) “*right of accretion*” means the right of the heirs or legatees to add to their shares in the inheritance, the share of any co-heir or legatee;

(v) “*right of representation*” means the right conferred by law upon certain relatives of a deceased person to succeed to all rights to which such a person would have succeeded, if living;

(w) “*sortition*” means the adjudication of the lots or the shares to the interested parties by draw of lots;

(x) “*Special head of the family*” means the head of the family restricted to certain assets of inheritance, such as the donee who brings the gifted assets into the mass of the inheritance and the co-heirs in lawful possession of certain assets of the inheritance prior to the opening of succession;

(y) “*Special Notary*” means a Notary with special powers to draw authentic documents such as (a) wills, (b) record of printed open wills (c) instruments of consent to the will by the spouse of the testator, (d) instruments of renunciation of inheritance, (e) record of approval of the closed wills, (f) ante nuptial agreements, (g) deeds of declaration of heirship, (h) adoption deeds and (i) such other acts which the Special Notary is authorized to perform by law;

(z) “*to make a record*” or “*to draw a record*” means to draw up a written account of an act or a series of acts under authority of law by the Special Notary and designed to furnish permanent authentic evidence of the matters to which it relates;

(za) “*Unknown heir*” means a heir whose identity is not known.

PART II

SUCCESSION

CHAPTER I

PRELIMINARY PROVISIONS

3. Succession.— Succession is the transmission of the estate of a deceased person in favour of his successors. Successor is the person who is called to succeed to the juridical relations of the deceased person and upon whom the assets and liabilities devolve.

4. Types of Succession.— (1) Succession may be intestate or legal and testamentary.

(2) Testamentary succession is the succession which results from a will left by the estate leaver

and a testamentary heir is a heir instituted by a will. Contractual succession is illegal, except when expressly authorised by law.

(3) Intestate succession is either free or forced. Forced succession is the one which is reserved by law to the forced heirs and places restrictions on the freedom of the estate leaver to dispose of his estate.

5. Types of successors: Heirs and legatees.—

(1) Heir is the person who inherits or succeeds to the totality of the estate of the estate leaver or to an undefined share thereof, without specifying the assets constituting it, while a legatee is the one who succeeds to specific and determined assets.

(2) A person who succeeds to the remainder of the estate when the assets constituting the remainder are not determined, is a heir.

(3) An usufructuary is a legatee even if he be entitled to the usufruct of the totality of the estate.

(4) The nomenclature used by the testator, if in contravention of the above provisions, shall not change the character of the successor.

6. Inheritance.— Inheritance or succession of a deceased person comprises of all the properties, rights and obligations which he leaves upon death. Personal rights, which by their very nature or by operation of law, extinguish upon death of the title holder, do not form part of the inheritance.

7. Simultaneous death of the estate leaver and the successor.— If the estate leaver and those who succeed him, either by virtue of a will or by operation of law, die simultaneously in the same accident or on the same day and it is not possible to ascertain who died first, it shall be presumed that all died at the same time and there will be no transmission of the inheritance or the legacy as between them.

CHAPTER II

OPENING OF THE INHERITANCE, COMPETENCE TO SUCCEED AND TRANSMISSION OF OWNERSHIP AND POSSESSION

8. Opening of the succession.— (1) Succession opens upon the death of the estate leaver.

(2) The place where the succession opens shall be determined as follows:—

(a) if the deceased had a permanent residence in the State of Goa, the succession opens at the place of his permanent residence;

(b) if the deceased did not have a permanent residence in the State of Goa, the succession opens where his immovable properties are situated in the State of Goa. If his immovable properties are situated at different places in the State of Goa, the succession opens where the major part of these properties are situated. Such major part is calculated on the basis of the value of the properties. If the immovable properties of the deceased are situated partly in the State of Goa and partly outside the State of Goa but within the country, the succession opens in the State of Goa irrespective of the value of the properties;

(c) the succession of a person, who died outside the State of Goa, and did not have permanent residence in the State of Goa nor did he own any immovable properties in the State of Goa but has movables in the State of Goa opens at the place where the major part of the movable assets are located.

(d) Where the deceased did not have a permanent residence nor immovable properties in the State of Goa, the succession opens at the place where he died in the State of Goa.

(3) The succession is universal and, subject to the provisions of section 374, the succession of a deceased person to whom this Act is applicable may be partitioned in Goa, wherever the properties, movable or immoveable, are situated.

9. *Competence to succeed.*— (1) All persons, besides the State, who are born or conceived at the time of the opening of the succession are competent to succeed, unless the law provides otherwise.

(2) In case of testamentary or contractual succession, the following are also competent to succeed:—

(a) Those, not conceived, who are to be born, children of a determined person who is living at the time of the opening of succession;

(b) bodies having juridical personality.

10. *Incompetence to succeed by reason of unworthiness to succeed.*— (1.) The following persons shall be unworthy to succeed the estate leaver and are, consequently, incompetent to be his successors:—

(a) A person convicted for the commission of murder of, or attempt to murder, the estate leaver or his spouse, descendant, ascendant, adopter or adoptee;

(b) A person convicted for defamation of the persons specified in the preceding clause or for giving false evidence against the aforementioned persons in relation to an offence punishable with rigorous imprisonment for not less than two years, whatever its nature;

(c) A person who, by deceit or coercion, induced the estate leaver to make, revoke or modify a will, or obstructed him from doing so;

(d) A person who has fraudulently spirited away, concealed, destroyed or suppressed a will, before or after the death of the estate leaver or has benefited himself by any of his abovementioned acts.

(2) The conviction mentioned in clauses (a) and (b) of sub-section (1) may be subsequent to the opening of the inheritance; but the offence must have been committed before it.

However, when the institution of an heir or the appointment of a legatee is subject to a condition precedent, the offence committed before the condition is fulfilled shall be relevant till the condition is fulfilled and shall have the same consequences.

(3) Upon conviction as provided in clause (a) or (b) of sub-section (1) becoming final, the person so convicted shall be unworthy of succeeding to the estate leaver.

(4.) The suit for a declaration that the person is unworthy of succeeding to the estate leaver may be filed within 1 year from the date of knowledge of the cause of unworthiness laid down in clauses (c) and (d) of sub-section (1).

11. *Consequence of declaration of unworthiness to succeed.*— (1) Once a person is declared as unworthy to succeed by a Court or is unworthy of succeeding as provided in

sub-section (1) of section 10, the inheritance is deemed not to have devolved on him, and such person shall, for all purposes be considered a person in malafide possession of the assets.

(2) In case of legal succession, the incompetence contemplated in sub-section (1) above does not affect the right of representation of his descendants.

12. *Re-acquisition of competence to succeed.*— (1) A person unworthy to succeed re-acquires competence to succeed if the estate leaver expressly rehabilitates him by a will or a deed drawn before a Special Notary.

(2) Where the testator does not expressly rehabilitate such person, but the testator benefits him in the will when he was fully aware that he had given cause to be unworthy to succeed, the person may inherit within the parameters of the testamentary disposition.

13. *When the ownership and possession is transmitted.*— The ownership and possession of the inheritance is transmitted to the heirs, whether testamentary or intestate, the moment the estate leaver dies.

CHAPTER III

RIGHT TO PARTITION THE INHERITANCE

14. *Partition by inventory.*— An inheritance may be partitioned by a mandatory inventory or optional inventory as provided in sections 367 and 368 respectively.

15. *Partition by deed.*— Where the heirs are of full age and none of them is under disability or is absent, they may, by consent, partition the inheritance by executing a deed of partition under the Registration Act, 1908 (Central Act 16 of 1908), provided such deed of partition is preceded by a deed of declaration of heirship.

16. *Inheritance is indivisible till partition is effected.*— Where more than one person has a claim to the inheritance, their rights shall be indivisible both in respect of ownership and possession, till the partition is effected.

17. *Consequences of transfer of specific asset of inheritance.*— (1) A co-heir is not entitled to dispose of any specific asset of the inheritance or

part of such an asset to a stranger until and unless the said asset or part thereof is allotted to him in the partition. Any such transfer, if made, shall be inoperative and void.

(2) Where, however, a co-heir transfers his undivided right to the inheritance to a stranger, the transfer shall be subject to the right of preemption.

18. *Right of co-heir to claim the inheritance in its entirety.*— Any heir may recover the whole of the estate or part thereof in possession of a third party or obtain an injunction against such party under the provisions of the Specific Relief Act, 1963 (Central Act 47 of 1963) and the latter shall be precluded from raising the plea that such estate or part thereof does not solely belong to such co-heir.

19. *Right to demand partition.*— (1) Any of the co-heirs or the moiety holder has the right to demand partition of the inheritance.

(2) No co-heir or moiety holder may renounce the right to demand partition of the inheritance.

(3) However, the parties may agree to keep the inheritance undivided for a certain period not exceeding 5 years.

20. *Partition of assets of Joint family.*— The partition of the assets amongst members of a joint family shall take place in accordance with the provisions that govern partition among co-heirs.

21. *Period of limitation to institute Inventory proceeding.*— The right to institute Inventory Proceeding gets extinguished on the expiry of a period of 30 years from the date of the death of the estate leaver unless the marriage is governed by the regime of community of assets in which case the period shall commence from the date the death of the surviving spouse.

CHAPTER IV

ACCEPTANCE AND RENUNCIATION OF THE INHERITANCE

22. *Acceptance of inheritance.* — Acceptance of inheritance shall be unconditional.

23. *Devolution of inheritance under different titles.*— The person who renounces the inheritance which devolves on him by one title is not, for that reason, debarred from accepting the inheritance which devolves on him by another title.

24. *Freedom to accept or renounce.*— The acceptance or renunciation of the inheritance is an entirely voluntary and free act.

25. *Nullity of restricted acceptance or renunciation.*— It is not lawful for a person to accept or renounce an inheritance in part, or for a certain time limit or conditionally.

26. *Capacity to accept or renounce.*— Any person who is capable of managing his assets may lawfully accept or renounce the inheritance.

27. *Acceptance or renunciation by one of the spouses only.* — A married person is not entitled to accept or renounce an inheritance without written consent of the other spouse. The consent may be made good by an order of the Court.

28. *Acceptance of inheritance left to a person under disability.* — The inheritance left to a minor or a person under other disability may be accepted by those who represent him.

29. *Acceptance or renunciation of inheritance left to a deaf and dumb person.*— A deaf and dumb person, who is not under guardianship and who knows to write, may accept or renounce the inheritance, either personally or through a constituted attorney.

30. *Form of acceptance.*— (1) The acceptance of inheritance is express or tacit.

(2) The acceptance is express when in any document the heir accepts the title or quality of heir. The acceptance is tacit, when the heir does some act from which the intention to accept has to be necessarily inferred or the act done is of such a nature that he could not have done it otherwise than as an heir.

(3) However, acts done solely to preserve or to provisionally manage or safeguard the assets of the inheritance do not imply its acceptance.

31. *Gratuitous transfer of inheritance or share therein.*— A gratuitous transfer of inheritance or share therein in favour of all the co-heirs to whom it would have belonged in the absence of the transfer shall be deemed to be renunciation of the inheritance.

32. *Consequences of Court decision declaring a person to be an heir.*— A person who has been declared to be an heir by an order or decree of

a Court that has become final or a person against whom a decision has been passed expressly in that quality shall be deemed to be an heir both in relation to the creditors or the legatees who had been parties to the case as also in relation to others.

33. *Absence of consensus among heirs to accept or renounce inheritance.*— Where there is no consensus amongst the heirs as to whether the inheritance should be renounced, some may accept it and others may renounce it.

34. *Transmission of right to accept.*— Where the heir dies without accepting or renouncing the inheritance, the right to accept or renounce shall pass on to his heirs.

35. *Indivisibility of renunciation.*— (1) The heir who has accepted the inheritance of the estate leaver may renounce the inheritance which the estate leaver had not accepted at the time of his death.

(2) Renunciation of the inheritance of the estate leaver shall mean renunciation of all inheritances which would have otherwise devolved on the estate leaver.

36. *How renunciation is effected.*— (1) Renunciation of an inheritance shall be made before the Court having jurisdiction over the place where the succession opens or before any Special Notary.

(2) When made before the Court, it shall be drawn in a book which shall have its pages duly numbered, and initialled by the Court and when made by the Special Notary it shall be drawn in his respective Book. The deed or record of renunciation by the heir shall be written in indelible black ink in a clear and legible handwriting.

(3) It is the duty of the Court to inspect the book once a year and record a certificate of inspection on the page immediately following the last page used. The register shall be maintained in the chronological order and shall be preserved as a permanent record of the Court.

(4) When an heir renounces the inheritance through his attorney, the power of attorney shall be also preserved in a separate file maintained for the purpose and the page at which the power of attorney is placed shall be mentioned at the bottom

of the deed. The file shall have an index of the powers of attorney.

(5) Where the renunciation is made through an attorney, the original power of attorney with the specific power to renounce shall be preserved in the Court or office of the Special Notary, as the case may be.

37. *Consequences of renunciation.*—(1) Where the person who is called to succeed, renounces the inheritance, he shall be deemed to have never been an heir. There is no right of representation in this case. But the renunciation of the inheritance does not deprive the person who has renounced of the right to receive the legacies which might have been bequeathed to him.

(2) The person called to succeed who is entitled to an inheritance under a will and intestate, and renounces it under the will is presumed to have renounced also the intestate inheritance. But, if he renounces the inheritance as an intestate heir without having knowledge of the will, he may accept the inheritance under the will, notwithstanding the former renunciation.

38. *Implications of renunciation of disposable share.*— Renunciation of the disposable share shall not imply renunciation of the mandatory share, unless it is expressly made.

39. *When acceptance may be challenged.*— (1) No heir who has accepted the inheritance may thereafter challenge his acceptance unless :- (a) there was coercion or; (b) he was induced to accept it by fraud; or (c) more than half of the inheritance has been bequeathed by will and the existence of the will was not known to the heir at the time of acceptance.

(2) The provisions of sub-section (1)(a) and (1)(b) shall be applicable to renunciation.

40. *Subrogation by Creditor.*— Where an heir renounces the inheritance to the detriment of his creditors, the latter may apply to the Court for authorising them to accept it in lieu and on behalf of the debtor-heir, but after the creditors are paid, the remainder of the inheritance shall go to the other succeeding heirs and not to the heir who had renounced it.

41. *Prohibition to renounce.* — No person is permitted to renounce, whether in the ante-nuptial agreement or otherwise, the right to any

future inheritance or to alienate or create a charge on the rights which he may eventually have to any inheritance.

42. *Retroactivity of acceptance or renunciation.*— Acceptance or renunciation of the inheritance has retrospective effect from the date of the opening of the inheritance.

43. *Inheritance at abeyance.*— The inheritance is at abeyance when the inheritance has neither been accepted nor has it been declared vacant.

44. *Temporary management.*— (1) The person who is called to succeed is not debarred, even if he has not yet accepted or renounced the inheritance, from taking steps to manage the assets when delay may cause injury.

(2) Where several persons are called to succeed, it is lawful for any of them to perform acts of management; but if there is objection from another, the vote of the majority shall prevail.

45. *Notice to accept or renounce the inheritance.*— (1) When a person called to succeed is known and he neither accepts nor renounces the inheritance, the Court having jurisdiction over the place of permanent residence of the heir, may, on application from an interested party, cause a notice to be served on him calling upon him to either accept or renounce the inheritance within such reasonable time, not exceeding 60 days, as may be fixed by the Court.

(2) When no statement of acceptance is made nor is any document renouncing the inheritance produced, the inheritance shall be deemed to have been accepted.

(3) If the heir renounces the inheritance, then, without prejudice to the provisions of sub-sections (4) to (6), the next immediate heirs shall be notified and so on, successively, till no person comes forward to claim the inheritance over the State.

(4) The creditors of the heir who renounces the inheritance may accept it when it is necessary to safeguard and guarantee the rights of the creditors. The creditors who are subject to a condition precedent or to a specified period may exercise such right when there is just apprehension that waiting for the fulfillment of the condition or for the debt to fall due, is likely to cause them prejudice.

(5) Such creditors have to accept the inheritance within six months from the date of knowledge of the renunciation.

(6) The Court shall notify the debtor that the creditors have accepted the inheritance. Acceptance by one creditor enures to the benefit of all creditors.

(7) Upon the creditors of the heir who has renounced the inheritance being paid, the remainder shall devolve on the next immediate heirs, and not on such debtor.

CHAPTER V

LIABILITIES OF THE INHERITANCE

46. *Liabilities of the inheritance.*— The liabilities of inheritance shall be satisfied in the following order of priority:-

(1) the funeral and expenses towards last rites and religious services for the soul of the estate leaver;

(2) to meet the burden of the executorships and management;

(3) towards the payment of the debts of the deceased and for the satisfaction of the legacies.

47. *Order of priorities.*— The creditors of the inheritance and the legatees have priority over the personal creditors of the heir and the creditors of the inheritance have priority over the legatees.

48. *Liability of the usufructuary.*— (1) The usufructuary of the entire inheritance of the deceased or of a share thereof may advance the sums required, according to the assets he enjoys, to meet the burdens of the inheritance, but he retains the right to recover from the heirs, at the end of the usufruct the sums advanced.

(2) If the usufructuary does not advance the amounts required, the heirs may demand that such of the assets enjoyed by the usufructuary, as may be necessary, be sold to meet the liability, or they themselves may pay the liability and, in this event, they shall have the right to demand interest from the usufructuary at the rate of 8% per annum.

49. *Legacy of maintenance or lifetime pension.*— (1) The usufructuary of the entire inheritance of the deceased is bound to satisfy fully the legacy for maintenance or lifetime pension annuity or monthly allowance.

(2) Where the usufruct is in respect of a share of the estate, the usufructuary is bound to contribute only in proportion to his share for the satisfaction of the legacy for maintenance or lifetime pension annuity or monthly allowance.

(3) The usufructuary of specified assets is not bound to contribute for the aforementioned maintenance or pension if such burden is not imposed on him expressly.

50. *Rights and duties of the heirs in respect of the inheritance.*—(1) The heir shall retain, as against the inheritance, till partition, all the rights and duties vis a vis the deceased, with the exception of those that get extinguished upon the death of the latter.

(2) The amount of money which the heir owes to the inheritance is to be set off against his share.

(3) Where it is necessary to adjudicate on the rights and duties of the heir and he is the head of the family, an administrator shall be appointed to manage the inheritance.

51. *Bonafide satisfaction of the legacies.*— If a will is declared null or is annulled after the satisfaction of the legacies made in good faith, the presumptive heir is discharged of his obligation towards the true heir, by handing over the remainder of the inheritance to the true heir, without prejudice to the rights of the latter against the legatees.

CHAPTER VI

LEGAL SUCCESSION

52. *When legal succession takes place and its extent.*— Where any person dies without making a disposition of his assets or making a disposition of only a part thereof or, having made a will, the will is annulled, revoked, reduced or it lapses, his legal heirs shall inherit the assets or the part thereof.

53. *Order of legal succession.*— (1) The legal succession shall devolve in the following order:—

(i) on the descendants;

(ii) on the ascendants, subject to the provisions of sub-section (2) of section 73;

(iii) on the brothers and their descendants;

(iv) on the surviving spouse;

(v) on the collaterals not comprised in clause (iii) upto the 6th degree;

(vi) on the State, provided that, in the absence of testamentary or intestate heir of a beneficial owner or of an emphyteusis, the property shall revert to the direct owner.

(2) In respect of persons referred to in clauses (i), (ii) and (iii) of sub-section (1), the agricultural produce or fruits, gathered or growing, meant and necessary for the maintenance of the couple shall be deemed to be the personal property of the surviving spouse, provided that on the date of the opening of the inheritance there is no suit for divorce or separation of persons and properties, pending or decreed.

54. *Proximity of degree.*— Within each group referred to in section 53, the relative closer in degree shall exclude the more remote, unless the law has conferred on the latter the right of representation.

55. *Succession per capita.*— The relatives who are in the same degree shall inherit per capita or in equal proportion subject to the provisions of section 64.

56. *Accretion upon renunciation of the inheritance.*— Where the nearer relatives renounce the inheritance, or are incapable of succeeding, the said inheritance shall devolve on the relatives of the next degree; but where only some of the co-heirs renounce their share, such share shall be added to the share of the other co-heirs within the same group.

57. *Degree and lines of kinship.*— Each generation constitutes a degree and a series of degrees constitute a line of kinship.

58. *Direct and collateral line.*— The line of kinship is either direct or collateral; the direct line is constituted by a series of degrees between persons who descend one from the other; the collateral line is constituted by a series of degrees between persons who do not descend one from the other, though they descend from a common progenitor.

59. *Types of direct line of kinship.*— The direct line is either descending or ascending; descending, when it is considered as proceeding from the progenitor to the progeny; ascending when it is considered as proceeding from the progeny to the progenitor.

60. *How degrees are counted in the direct line.*— In the direct line, the degrees are counted by the number of the generations, excluding the progenitor.

61. *How degrees are counted in the collateral line.*— In the collateral line, the degrees are counted by the number of generations, ascending by one of the lines to the progenitor and descending by the other line, without counting the progenitor.

62. *Incapacity to inherit by legal succession.*— The persons incapable of acquiring by will are incompetent to acquire by legal succession.

63. *Extent of Incapacity.*— The incapacity of the heir ceases with him. His children and descendants, if any, succeed as if the person incapable of succeeding had died without any incapacity.

CHAPTER VII

RIGHT OF REPRESENTATION

64. *Right of representation.*— The right of representation arises when the law designates certain relatives of the deceased person who succeed to all the rights to which such person would have succeeded, if alive.

65. *Representation in the direct line.*— The right of representation takes place always in the direct descending line but never in the ascending line.

66. *Representation in the collateral line.*— In the collateral line, the right of representation takes place in favour of the descendants of the brothers and sisters of the deceased.

67. *Right of the representatives.*— The representatives inherit only what the person represented would have inherited, if alive.

68. *Joint representatives.*— If there be several representatives of the same person, they shall share equally among them what would belong to the person represented, if alive.

CHAPTER VIII

ORDER OF SUCCESSION SUCCESSION OF
DESCENDANTS/ASCENDANTS

69. *Succession of children and their descendants.*— Children and their descendants succeed to their respective parents and other ascendants, without distinction of sex or age.

70. *When filiation is disputed.*— (a) Where, in a proceeding for partition of an inheritance, the filiation is disputed and it is not proved by documentary evidence, such party will have to institute a suit for declaration.

(b) No proceeding for partition of an inheritance shall be stayed pending the final disposal of such suit.

(c) Where the party succeeds in the suit, he shall, on his application, be impleaded in the inventory proceeding and participate in the proceeding from the stage it has reached or, where the partition in such proceeding has been homologated, he shall have his share settled in money as provided in section 450.

71. *Succession per capita.*— Where all the descendants are of the first degree, they shall succeed per capita and the inheritance shall be divided into as many shares as the number of heirs.

72. *Succession per stirpes.*— Where all or some of the heirs have a claim by virtue of the right of representation, they shall succeed per stirpes or by forming branches amongst whom the inheritance shall be distributed and sub divided into branches where there is more than one heir. The rule of equality shall be observed both in the division and in the sub-division.

Succession of Ascendants

73. *Succession of parents.*— (1) Where a person dies without descendants, his father and mother shall succeed to him in equal shares or to the entire inheritance where only one of them is living.

(2) However, if there are full blood brothers or sisters of a predeceased child or descendants of the deceased full blood brothers or sisters of such child the father or the mother who has married again does not inherit the assets which the predeceased child had inherited from the other progenitor or from his other ascendants but only the usufruct thereof.

(3) Where the parents have acknowledged that they are the parents of a child during the lifetime of the child, and the child dies without issue, the inheritance shall devolve upon his parents or one of them, as the case may be; where, in the circumstances mentioned above, such child dies without issue but leaving a surviving spouse, the surviving spouse shall have the right to usufruct of half of the inheritance.

Succession of Ascendants of the Second Degree

74. *Succession of grandparents and other ascendants.*— In default of parents, the inheritance of the deceased shall devolve on the ascendants of the second degree and in default of ascendants of the second degree, it shall devolve on the ascendants of the next degree, and so on.

75. *Division per capita.*— Ascendants in the same degree: Where the surviving ascendants are of the same degree, the inheritance shall be divided amongst them in equal shares, irrespective of whether they belong to the paternal or maternal line.

76. *When ascendants are not in the same degree.*— Where the ascendants are not in the same degree, the inheritance shall devolve on the nearest one, without distinction of the line.

*Succession of Brothers, Sisters and their
Descendants*

77. *Succession of brothers, sisters and their descendants.*— In default of descendants and ascendants and where the estate leaver has not disposed off his assets, his brothers, sisters and, in a representative capacity, their descendants, shall inherit the assets. However, the surviving spouse shall be the usufructuary of the estate of the deceased spouse irrespective of their matrimonial regime, if at the time of the death of the latter they were not divorced or there was no judicial separation by a decision that had become final.

*Succession of Surviving Spouse and of the
Collaterals*

78. *Succession of surviving spouse.*— In default of descendants, ascendants, brothers, sisters and their descendants, the surviving spouse shall succeed, provided that at the time of the death of

the other spouse, they were not divorced or there had been no judicial separation of spouses and assets by a decision which had become final.

79. *Collaterals other than brothers and their descendants.*— Where the deceased is not survived by any of the persons mentioned in clauses (i), (ii), (iii) and (iv) of sub-section (1) of section 53 and has not disposed off his assets, it shall be inherited by the collaterals other than brothers and their descendants till the 6th degree.

Succession of the State

80. *Succession of the State.*— In default of all testamentary or legal heirs, the State shall succeed.

81. *Rights and duties of the State.*— The rights and obligations of the State in respect of the inheritance shall be the same as those of any other heir.

82. *Prior Court order.*— The State cannot take possession of inheritance without prior decision of the Court declaring its rights thereto.

CHAPTER IX

PREFERENTIAL RIGHT OF THE SPOUSE

83. *Preferential right of habitation and use of surviving spouse.*— (1) The surviving spouse of the estate leaver shall have the right to exclusive habitation of the residential house of the family and the right to use the movables and other objects or utensils intended for the comfort, service and decoration of the house. If such claim is made, the value of the right to habitation and use shall be determined and the surviving spouse shall pay owelty to the heirs if the value of right of habitation and use exceeds the value of her moiety and share, if any.

(2) The person having right to habitation and use is bound to use the property as a prudent man would use.

(3) If the surviving spouse fails to inhabit the house for a period of one year, the right shall cease.

(4) At the request of the owner of the house, the Court may, if it deems just to do so, require the surviving spouse to give such security as found necessary.

CHAPTER X

MANDATORY SUCCESSION, COLLATION AND REDUCTION

84. *Disposable portion.*— The portion which the testator may freely dispose off shall be called the disposable portion and it shall consist of half of the estate of the estate leaver, except as provided hereunder:—

(a) *Legitime of the parents:* Where the estate leaver has no children or descendants at the time of his death but either his mother or father is alive, the legitime of the surviving parents shall consist of half of the inheritance.

(b) *Legitime of other ascendants:* Where the estate leaver has at the time of his death ascendants other than the father or mother, their legitime shall consist of one third of the inheritance.

85. *Restrictions on transfer by parents, or grandparents.*— Parents or grandparents shall have no right to sell or mortgage their assets to their children or grand children unless the remaining children or grand children and their spouses give their consent thereto in writing.

86. *Disposition of specific usufruct or lifetime annuity.*— Where the testator bequeaths a specific usufruct or a lifetime annuity and the value of such usufruct or lifetime pension annuity exceeds in value his disposable portion, the forced heirs may give effect to the legacy or deliver to the legatee the disposable portion only.

87. *Inofficious dispositions.*— Dispositions by the estate leaver by gift or will which exhaust the disposable portion and impair the mandatory share of the forced heirs shall be called inofficious dispositions.

88. *Right of forced heir to claim reduction.*— Where the estate leaver has gifted or disposed off by will assets in excess of his disposable portion, the forced heirs may apply that the gift or the testamentary disposition be reduced.

89. *Renunciation of right to claim reduction.*— No person shall during the lifetime of the estate leaver renounce his right to have the gift or will reduced.

90. *Computation of disposable portion.*— (1) For the purposes of reduction of inofficious gifts

or wills the computation of the disposable portion shall be made as follows:—

(a) the values of all the assets left by the estate leaver on the date of his death, shall be added;

(b) thereupon, the value of the assets gifted by the estate leaver during his lifetime shall be added;

(c) and thereafter, the debts of the estate leaver shall be deducted.

The disposable portion shall be calculated taking into account the total sum.

(2) The value of the gifted assets shall be the value they had on the date of the opening of the inheritance, and this date shall be considered for computation of the disposable portion.

Where the thing gifted has perished for no fault of the donee, the gifted thing shall not be included in the inheritance for the purpose of computation of the legitime, unless otherwise provided.

Rules relating to collation

91. *Collation.*— When the gift made in favour of the forced heir impairs the mandatory share of the other forced heirs, the donee shall be bound to restore the excess to the mass of inheritance for the purposes of reconstituting the mandatory share and equalization of partition. Such return is called collation.

92. *Exemption from collation.* — (1) Forced heirs may be exempted from collation if the donor so states expressly or if the donee renounces the inheritance. Nevertheless, the other heirs have the right to obtain reduction of the gift, if the gift is inofficious.

(2) Where the forced heir is exempted from collation it shall be deemed that the donor intended that the gift be reckoned in the disposable portion.

93. *When is a gift deemed an advancement of the legitime.*— Where the donor makes a gift in favour of his forced heirs without stating that it shall be reckoned in the disposable share, such gift shall be deemed to be an advancement of the future legitime or part thereof.

94. *Collation by grandchildren.*— When the grandchildren succeed to the grandparents as representatives of their parents, they are bound to collate whatever their parents would have to collate, notwithstanding that the grandchildren have not inherited from the parents.

95. *When parents are not bound to collate.*— Parents are not bound to collate to the inheritance of their ascendants what was gifted by the latter to their children nor are the children bound to collate what was gifted to them during the lifetime of their parents, in case they succeed to them by virtue of the right of representation.

96. *Ascendants duty to collate.*— The ascendants who claim the inheritance of the descendant donor are not bound to collate.

97. *Spouses of children not bound to collate.*— The gifts made by the parents to the spouse of their son or daughter are not subject to collation, but when they are made jointly to both the spouses, the son or the daughter, as the case may be, shall be liable to collate to the inheritance his or her respective half of the value of the gifted assets.

98. *Expenses to be collated.*— (1) All the expenses which the deceased has made in favour of his children, whether by way of higher studies or for settling them in life or payment of their debts, shall be collated.

(2) But in the computation of such expenses ordinary expenses, which the parents are bound to incur, are not to be taken into account and the parents may dispense with collation provided the expenses do not exceed the disposable portion.

(3) The money which the children have spent to the benefit of their parents or given to them without being by way of gift, shall be deducted from the amounts to be collated.

(4) Where the deceased has made expenses in favour of his children for settling them in life or for payment of their debts, which have to be collated or where a co-heir has done improvements to the assets with the written consent of the other co-heirs, the value of the expenses or improvements shall be calculated taking into account the changes in the cost of living or the value of currency.

(5) Sums spent towards maintenance, and remuneratory gifts for services rendered, or gifts made to compensate the children for any

properties embezzled by their parents, shall not be subject to collation.

99. *Collation of fruits and profits of gifted things.*— The fruits and profits of the things gifted shall be computed from the date of the opening of the inheritance, for the purpose of collation

100. *How collation is done.* — (1) The collation shall be made in money, based on the value of the things as assessed at the time of the opening of the inheritance, unless the parties agree that the collation be done in kind.

(2) The value of the improvements made to the gifted properties by the donee, shall be assessed with reference to the date of the opening of the inheritance and it shall be deducted from the value of things gifted.

(3) The deterioration or reduction in value of the things gifted will not be taken into account, where the donee or his representatives are responsible for their deterioration and diminution in value, by reason of an act committed by them or by reason of their negligence.

(4) When collating, livestock, fungibles or consumable things or things subject to wear and tear, the condition in which they were, when possession was delivered to the donee, shall be taken into consideration. When restituting securities which are not in possession of the donee, the value they had at the time of the alienation shall be taken into account, if it is higher than the value they had at the time of the opening of the inheritance.

101. *Where the value of the gifted assets exceeds the value of donee's share in the inheritance.*— Where the value of the gifted properties exceeds the donee's share in the inheritance, the excess shall be returned in kind. The donee shall have the right to choose from amongst the gifted properties those that are necessary to make up his share in the inheritance and the encumbrances on the gift. The donee does not have the right to take part in the licitation of the properties, which he has to return to the other co-heirs. In case, amongst the gifted properties there is any property which is physically indivisible and which in its totality does not fit in the share of the donee, it shall be collated in kind and the donee shall be entitled to take part in the licitation, subject to the provision of section 428.

102. *On payments made.*— Payments made by the donee, payments of the debts of the donor or payments of the encumbrances in favour of third parties, including the payment to any co-heirs on account of their share in the value of the gifted properties, shall be updated with reference to the official index of inflation. The provision is applicable to collations and gifts, made in cash.

103. *Family arrangement.*— A gift inter vivos by a married couple, with or without the reservation of usufruct and with the written consent of all the presumed forced heirs, of their assets or a part thereof to any one or more of the presumed forced heirs, where the donees compensate or undertake to compensate the presumed forced heirs of their future mandatory share, is valid and shall not be deemed to be a contractual succession. Any change in the value of the assets at the time of the opening of the inheritance shall, in these cases, be irrelevant.

The owelty money, if not paid immediately, shall carry interest at the rate of 8% per annum.

104. *Gift of community assets.*— (1) When community assets are gifted by both the spouses, on the death of one of them the respective half only shall be brought for collation and on the death of the other spouse the other half shall be brought for collation. If the assets gifted are exclusive assets of either of the spouses, such assets shall be brought for collation, upon the death of the respective spouse.

(2) Once valuation of the community assets, which have not been gifted, is made, the same valuation is valid for the second partition, having regard to the official index of inflation.

(3) When a single judicial partition is made upon the death of both the donor spouses, the community assets gifted shall be valued only once with reference to their value at the time of the opening of the inheritance of the donor who has predeceased. This value shall be corrected as regards the second inheritance, if need be, taking into account the official index of inflation between the dates of the opening of the respective inheritance.

105. *How the shares of co-heirs are to be paid.*— (1) The shares of co-heirs of the donee shall be filled up, as far as possible, with assets of the same nature and kind, as those gifted to the donee.

(2) Where the gifted assets are immovables, and if it is not possible to fill up the shares of the co-heirs in the aforesaid manner, the said co-heirs shall be compensated in money. If there be no funds in the inheritance, as many properties as may be necessary to fetch the required amount, shall be sold in public auction. If the assets are movable, the co-heirs shall be compensated with other movables, having regard to their fair value.

106. *When the value of the assets gifted exceeds the legitime of the donee.*— When the value of the assets gifted exceeds the legitime of the donee, the excess shall be computed in the disposable portion of the donors. If despite such computation, the legitime and the disposable portion, are exceeded, the donee shall be liable to bring the excess into the estate.

107. *Where there are several donees.*— Where there are several donees, and the disposable portion is not sufficient to satisfy all the donees, the provisions of sections 114 and 115, shall be followed.

108. *Dispute as regards obligation to collate.*— Where there is a dispute between the co-heirs regarding the obligation to collate or over the subject of collation and the dispute cannot be decided in the inventory, the inventory proceeding shall not be stayed on that ground and the person bound to collate, shall furnish security in respect of the properties gifted to him till the dispute is decided by a competent court.

109. *Assets which devolve in a preferential manner.*— (1) The successor of any assets, which are not subject to partition, and which devolve in a preferential manner, is bound to collate, such improvements, which have increased the value of the assets.

(2) Where the assets which are not subject to partition and which are to devolve in a preferential manner have been acquired for a valuable consideration, the price of the acquisition or their value, shall be collated, at the option of the successor.

110 *Duty to collate is a charge in rem.*— The duty to collate constitutes a charge in rem on the gifted immovable properties.

111. *Reduction of legacy or gift.*— (1) Where the legacy or the gift impairs the legitime of the forced heirs, the legacy or gift may be reduced for

inofficiousness to the extent necessary to make up the legitime.

(2) For the purpose of determining whether there is inofficiousness, the disposable share shall be computed as provided in section 90.

112. *Order of reduction.*— Where inofficious gifts have been made, gifts mortis causa or legacies shall be reduced first and the gift inter vivos shall be reduced only when legacies are not sufficient to make up the legitime of the forced heirs.

113. *Partial reduction.*— Where a partial reduction of the legacies is sufficient to make up the legitime of the forced heirs, the legacies shall be reduced pro rata, among the legatees unless the testator has in his will stated that any one of the legatees shall be exempted from reduction or which shall be the order of reduction.

114. *Reduction of gifts inter vivos.*— Where gifts inter vivos are to be reduced, the last shall be reduced first in its totality or in part, and when the last gift is not sufficient to make up the legitime, the next immediate shall be reduced and so on.

115. *Pro rata reduction.*— Where several gifts are made in the same gift deed or on the same day, the gifts shall be reduced pro rata.

116. *Reduction in respect of movables.*— When the gift consists of movables, their value at the time the gift was made shall be taken into account for the purpose of reduction and the provisions of sub-sections (3) and (4) of section 100 shall be applicable.

117. *Reduction of gifts of immovables.*— (1) When the gift consists of immovables, they shall be reduced in specie, and the provisions of sub-sections (3) and (4) of section 100 shall be applicable.

(2) For the purpose of reduction, their value shall be computed as on the date the reduction is made, and neither the increase in the value resulting from the improvements made by the donee nor the decrease of such value arising from deteriorations imputable to the same donee shall be included therein.

118. *When immovable cannot be divided.*— Where any immovable is not susceptible to division without detriment:

(a) when the amount of reduction exceeds half of the value, the donee shall have the remainder in cash; and

(b) when the reduction does not exceed the said half, the donee shall return the amount of the reduction.

119. *When the donee may retain the gifted property.* — Where the donee is also a co-heir, he may retain the gifted property, if the value of such immovable does not exceed the value of the legitime of the co-heir added to the value of the reduced gift.

Otherwise, the donee shall return the gifted property to the inheritance, and he shall be paid off for the legitime and the reduced gift in accordance with the general rules of partition.

120. *When immovable properties are not in possession of the donee.* — Where the immovable properties are not in possession of the donee at the time of the reduction or revocation, he shall be liable for its value at the time of the opening of the inheritance. If the donee has alienated the gifted assets, he shall have to compensate in cash and if the donee has mortgaged the gifted assets, the heir to whom such assets have been allotted shall be entitled to redeem the mortgage and claim the amount of redemption including the expenses incurred in that regard from such donee.

121. *When the donee is insolvent.* — Where the gift consists of movables and the donee is insolvent, the parties may claim from the immediate transferees, if the transfer was done gratuitously and the right is not extinguished by prescription, the value of such movables at the time of the acquisition.

122. *Fruits and profits in the event of reduction.* — The donee affected by reduction is liable for the fruits and profits only from the date of demand. However, if the donee is a co-heir, he is liable from the date of the death of the donor.

CHAPTER XI

TESTAMENTARY SUCCESSION

123. *Institution of heir.* — One or more persons may be instituted as heirs and even where the testator has left them shares in the inheritance in a certain proportion, they shall nevertheless be considered heirs.

124. *Liability of the heirs.* — The heir is liable to pay the debts and satisfy the legacies within the resources of the inheritance.

125. *Liability of the legatee.* — The legatee is not liable for the encumbrances of the legacy beyond the resources of the legacy.

126. *Apportionment of liabilities where inheritance is distributed by way of legacies only.* — (1) Where the inheritance has been entirely distributed by way of legacies, the debts and encumbrances shall be distributed among the legatees in proportion to their legacies, unless the testator has given directions to the contrary.

(2) Where the assets of the inheritance are not sufficient to pay the legacies, the same shall be paid pro rata, except for remuneratory legacies which are considered to be debts of the inheritance.

127. *Specific sum or thing bequeathed.* — Where the testator has bequeathed a specific sum of money only or a specified thing or a determined part of the inheritance, the disposition shall be considered to be a legacy.

128. *Institution of heirs collectively.* — Where the testator institutes certain heirs individually and others collectively and says, for instance, “I institute as my heirs Peter and Paul and the children of Francis”, those who are collectively instituted shall be considered to be appointed heirs individually.

129. *Brothers generally instituted as heirs.* — Where the testator institutes his brothers in general as heirs and he has full blood, consanguineous or uterine brothers, the succession shall be considered intestate.

130. *Institution of certain person and his children.* — Where the testator institutes a certain person and his children as heirs, they shall be considered to have been appointed heirs simultaneously and not successively.

131. *Right to be compensated for management of inheritance distributed by way of legacies.* — The heir, who has managed the inheritance which has been distributed by way of legacies, shall be entitled to be compensated by the legatees for the expenses which he has incurred towards the legacies.

132. *Legacy of a thing subsequently acquired.*— Where the bequeathed thing, which did not belong to the testator at the time he made the will, subsequently comes to belong to him under any title, the bequest shall take effect as if such thing belonged to the testator at the time the will was made.

133. *Legacy of a thing belonging to the heir or legatee.*— Where the testator directs that the heir or the legatee shall give to another person a thing belonging to one of them, he shall be bound to carry out the disposition or give the value of the thing, if he does not choose to relinquish the inheritance or the legacy.

134. *Legacy of a thing which belongs only in part to the testator or to his successors.*— Where the testator, the heir, or the legatee, is the owner of a part only of the bequeathed thing or has a limited right only to the bequeathed thing, the bequest shall take effect only to the extent of such part or of such right.

135. *Restraint on marriage.*— (1) The condition which prohibits the heir or the legatee from getting married, or from remaining unmarried, except when the same is imposed on a widow or widower having children, by the deceased spouse or by his or her descendants or ascendants and so also the condition which compels him to take priesthood vows or to take or not to take a certain and specified profession, shall be deemed inexistent.

(2) The provisions of sub-section (1) shall not be applicable to testamentary disposition which limits the duration of the benefits for the period during which the heir or legatee holds a particular status, namely, bachelorhood, widowhood, or married status.

136. *Condition to reciprocate.*—The disposition made on condition that the heir or legatee shall also make in his will a disposition in favour of the testator or of another person, shall be null and void.

137. *Deferred execution of the disposition.*— The condition which suspends the operation of the disposition for a certain period, shall not be a bar for the heir or legatee to acquire right to the inheritance or to the legacy and to transmit it to his heirs.

138. *Ineffective dispositions.*— The legacies shall not take effect:—

(a) if the testator alienates the bequeathed thing; or.

(b) when the bequeathed thing is res extra-commercium; or

(c) when the testator transforms the bequeathed thing in such a way that it does not have either its original form or its denomination; or

(d) where the testator has been dispossessed of the bequeathed thing by a person having a lawful title thereto or it has been wholly destroyed during the lifetime of the testator and the heir is not responsible therefore.

139. *Legacy in the alternative.*— (1) Where a legacy is in the alternative, that is, the testator makes a bequest of one of two or more things and one of them is destroyed, the existing thing or things shall be delivered to the legatee.

(2) Where only a part of the thing is destroyed, the remainder shall be delivered.

140. *Indivisibility of the disposition.*— The legatee is not entitled to accept a part of the legacy only and relinquish the other part; neither is the legatee entitled to relinquish an onerous legacy and accept the one which is not onerous.

However, the heir, who is at the same time a legatee, may relinquish the inheritance and accept the legacy and vice versa.

141. *Supervenienc of descendants.*— (1) The will made by a person who did not have children at the time of making it or did not know that he had children, lapses in the event of supervenienc of children or other descendants.

(2) A legacy does not lapse in any of the cases mentioned above but it may be reduced as inofficious in accordance with section 111.

142. *Effect of supervenient children predeceasing.*— Where the supervenient children die before the testator, the disposition shall take effect unless revoked by the testator.

143. *Legacy of a pledged thing.*— Where the bequeathed thing is pledged it shall be redeemed at the expense of the inheritance.

144. *Legacy of thing ascertainable at the place where found.*— The legacy of a thing or a quantity which is to be received at a fixed place shall take effect only to the extent of the portion that is found at that place.

145. *Legacy of debt not fallen due.*— (1) Where the testator bequeaths a certain thing or a certain amount as a debt owed by him to the legatee, the legacy shall be valid, notwithstanding that the amount or thing was not really due, unless the legatee was incompetent to receive it as a gift.

(2) If a debt is to fall due only after a certain period, the legatee is not bound to wait for the expiry of the period to demand its payment. However, the legacy will not take effect if the testator, who was a debtor at the time of making of the will, has paid the debt subsequently.

146. *Legacy made to the creditor of testator.*— (1) Where the testator makes a bequest to the creditor without making any reference to the debt of the testator, the legacy shall not deemed to have been made in payment of debt.

(2) Where the testator bequeaths any outstanding debt due to him, whether recoverable from a third party or from the legatee himself, or discharges the legatee of the debts, the heir shall carry out the bequest by handing over to the legatee the respective instrument, if any.

(3) Where it is proved that the debt due to the testator has been paid, wholly or in part, the legatee may demand from the heir the equivalent of the debt or of the part paid; but when the extinguishment of the debt results from any other cause, he shall not be entitled to make any demand to obtain its payment.

147. *Unconditional legacy.*— An unconditional legacy confers on the legatee a transferable right from the date of the testator's death.

148. *Choice of legacy of a generic thing.*— (1) Where the testator makes a bequest of an unspecified thing comprised in other things of the same kind, the selection of such thing shall be made by the person who has to hand it over from amongst the things having similar qualities.

(2) Where the right to select is by an express disposition of the testator given to the legatee, he

shall in his discretion select from amongst the things of the same kind.

But where things of the same kind do not exist in inheritance, it is the heir who shall select the thing to be given to the legatee and such thing shall be of similar value or quality.

149. *Heir's right to select.*— Where the legacy is in the alternative and the right to select has not been expressly conferred on the legatee, the heir shall have the right to select.

150. *Transmission of right to choose.*— Where the heir or legatee who has the right to select, has not made such selection during his lifetime, such right shall devolve on to the heirs. Once the selection is made, it shall be irrevocable.

151. *Legacy for maintenance.*— (1) Where a legacy is given for the maintenance of a legatee, the legacy shall include food, clothing and lodging and, when the legatee is below 18 years of age, it shall also include education, unless otherwise provided in the will.

(2) The maintenance given for education may be reduced in the event the ability to give or the need to receive, is reduced.

152. *Legacy of house with things existing in it.*— Where a house with all things found therein is bequeathed, the bequest shall not include debts due to the inheritance notwithstanding the fact that the instruments and documents relating to such outstanding debts due to the testator, are found in the house.

153. *Legacy of usufruct.*— A legacy of usufruct without fixing the period of its duration shall be construed to have been made for the lifetime of the legatee and where such legatee is a body with perpetual succession, the legacy shall be construed to have been made for a period of thirty years only.

154. *Legacy to minor.*— A legacy to a minor which is to be received by him after he attains majority cannot be demanded by him before he attains majority.

155. *Legacy for charitable purposes.*— A legacy left for charitable purposes shall be construed to have been made for the purpose of welfare and charity, unless otherwise provided in the will.

156. *Mistake as to object or subject of the legacy.*— The mistake of the testator in respect of the object or the subject of the legacy shall not render the legacy void, if it is possible to ascertain clearly what was the intention of the testator.

157. *Delivery of legacy.*— (1) Where the legatee is not in possession of the bequeathed thing, he shall call upon the heirs to give effect to the legacy.

(2) When the heirs delay in taking charge of the inheritance, the legatee may cause summons to be served on them to accept or renounce the inheritance.

(3) Where the heirs renounce the inheritance, the legatees may apply that a curator be appointed for the inheritance and demand the delivery of the legacy from the appointed curator.

(4) Where the legacy is an encumbrance on another legacy, the legatee of the encumbrance shall demand the legacy from the latter.

158. *Duty to carry out the Will.*— (1) Where the entire inheritance has been distributed by way of legacies and the testator has not appointed an executor, the legatee who is the most benefited shall be deemed to be the executor.

(2) Where there be more than one legatee in similar circumstances, such legatees shall choose one of them to be the executor.

(3) When there is no agreement between the legatees, or when any of such legatees is a minor, absent person or under interdiction, the executor shall be appointed by the Court.

159. *Fruits and income of legacy.*— Unless the testator has provided otherwise, the legatee is entitled to the fruits and profits of the bequeathed thing right from the date of the death of the testator, as well as to the interest accrued from the money bequeathed, from the expiry of the time to carry out the legacy.

160. *Legacy of periodic sums.*— Where the testator bequeaths periodic sums, the first period shall run from the date of the testator's death. The legatee shall have the right to the said installment the moment the new period commences, even if the legatee dies before the period comes to an end. However, the bequest shall be enforceable at the end of the period only,

unless the bequest is for maintenance in which case it shall be enforceable at the beginning of the period.

161. *Expenses for delivery of legacy.*— The expenses for the delivery of the bequeathed thing shall be met by the inheritance, unless the testator has provided otherwise.

162. *Manner and place of delivery.*— The bequeathed thing shall be delivered together with its accessories at the place and in the condition in which it was at the time of the testator's death. If the bequest consists of money, jewellery, or shares and other securities, whatever may be the type of the instruments, it shall be delivered at the place where the inheritance is opened unless the testator has provided otherwise or there is an agreement between the parties to the contrary.

163. *New acquisitions.*— If the person who bequeaths any immovable property adds subsequently to such property new acquisitions, these acquisitions, even if contiguous, shall not form part of the legacy without a new declaration of the testator. In case any improvement is made to the bequeathed property which is necessary, useful or luxurious, it shall form part of the legacy.

164. *Legacy of thing burdened with encumbrance in rem.*— If the bequeathed thing is burdened with any emphytheutic fee, share in the rent, easement or any other encumbrance inherent thereto, the bequeathed thing shall go to the legatee with the encumbrance. However, if such encumbrances are in arrears, such arrears shall be met by the inheritance.

165. *Lien on immovable assets.*— The immovable assets which devolve on the heirs from the testator are subject to a lien for the satisfaction of the legacies. However, if any one of the heirs is specifically made liable for any such payment, the legatee can exercise this right over the immovable asset which may be allotted to the said heir in the partition.

166. *Duty of co-heirs to compensate when the legacy consists of an asset of one co-heir only.*— Where the testator bequeaths a thing belonging to one of the co-heirs, the other heirs shall be bound to compensate him proportionately unless the testator has provided otherwise.

167. *Institution of heir or legacy subject to fulfillment of condition.*— If the inheritance or the legacy has been left subject to the condition that the heir or legatee should not give a specified thing or should not perform a specified act, the said heir or legatee may be compelled, at the instance of the interested parties, to furnish security for the performance of the condition, unless the condition is one of those contemplated by section 135.

168. *Conditional legacy.*— If the legacy is conditional or is to take effect after a certain time, the legatee may require the person who has to deliver the legacy, to furnish security.

169. *Responsibility of the heir apparent.* — (1) If the will is declared null and void after the payment of the legacy and the legacy has been satisfied in good faith, the heir instituted in the will shall stand discharged of his responsibility towards the true heir by delivering the remainder of the inheritance.

(2) The preceding provision shall also be applicable to legacies subject to encumbrances.

170. *Reduction of encumbrance attached to legacy.*— When the legacy is subject to an encumbrance and the legatee does not receive the whole legacy due to his own fault, the encumbrance shall be reduced proportionately and, in case he is dispossessed from the bequeathed thing, the legatee may demand the restitution of whatever was paid by him

Right of Accretion

171. *Right of accretion.*— (1) If any of the instituted co-heirs dies before the testator or renounces the inheritance or becomes incapable or unworthy of receiving it, his share shall be added to the shares of the other instituted co-heirs unless the testator has provided otherwise.

(2) The heirs shall also be entitled to the right to accretion if the legatees do not want or are unable to receive the legacy.

172. *Exclusion of right of accretion.*— (1) The legatees shall not have the right of accretion inter se.

(2) If the bequeathed thing is indivisible or cannot be divided without detriment, the

co-legatees shall have the option either to retain the whole thing against payment to the heirs of the value of the excess or to receive from them whatever as of right belongs to them, delivering to such heirs the bequeathed thing.

However, when the legacy is encumbered with an obligation and the said obligation lapses, the legatee shall profit from the resulting benefit, if the testator has not provided the contrary.

173. *Effects of accretion.*— The heir who acquires a share in the inheritance by reason of accretion shall succeed to all rights and obligations of the heir who did not wish or could not receive the disposition, had it been accepted by him.

174. *Renunciation of right of accretion.*— The heirs who get the right of accretion may renounce it in the event it carries special encumbrances created by the testator; but, in such a case, the said portion shall revert to the person or persons in whose favour the encumbrances have been created.

175. *Right to legacy.*— The legatee shall have the right to recover the bequeathed thing, whether movable or immovable, from a third party, provided that the bequeathed thing is certain and specified.

Substitutions

176. *Common or direct substitution.*— The testator may appoint one or more persons to substitute the instituted heir or heirs or legatees in case such heirs or legatees cannot or do not wish to accept the inheritance or the legacy. This is called common or direct substitution. Such substitution ceases to operate upon such heir accepting the inheritance

177. *Pupillary substitution.*— (1) The testator, who has children or other descendants under parental authority, who will not upon the death of the testator be under the authority of another ascendant, may substitute the said children or other descendants by heirs or legatees of his choice, in case the said children or other descendants die before completing eighteen years of age, irrespective of their sex. This is called pupillary substitution for minors.

(2) Such substitution becomes ineffective when:— (a) the person substituted attains the

age of eighteen years or (b) the substituted person dies leaving behind descendants entitled to succeed.

178. *Quasi pupillary substitution.*— (1) The provisions of section 177 shall be applicable, irrespective of the age, when the child or other descendant is of unsound mind provided he is so declared by the Court. This is called quasi pupillary substitution.

(2) Such substitution shall become ineffective if such unsoundness of mind ceases.

179. *Properties which may be subject to substitution.*— The substitution, pupillary or quasi- pupillary, may comprise such properties only which the substitute could have disposed of, if he was not unable or debarred from doing so at the time of his death and which he may have acquired through the testator.

180. *Rights and duties of the substitute.*— The substitute shall receive the inheritance or legacy with the same encumbrances, with which the substituted heirs or legatees would have received, with the exception of encumbrances which are solely personal, unless it has been provided otherwise.

181. *Reciprocal substitution.*— When the co-heirs or legatees with equal shares are reciprocally substituted, it shall be deemed that they have been substituted in the same proportion. However, if the number of substitutes exceeds the number of instituted heirs or legatees and no provision in that regard has been made, it shall be deemed that they were substituted in equal shares.

182. *Fide-commissary substitution.*— (1) The testamentary disposition whereby any heir or legatee is bound to preserve the inheritance or the legacy which on his death is to go to a further beneficiary is called the fide-commissary substitution or fidei-commissum and such heir or legatee is called fiduciary and such further beneficiary shall be called fidei-commissarius.

(2) It shall not be lawful to make a fidei-commissary substitution in more than one degree.

183. *Lapse of fidei-commissum.*— If the fidei-commissarius, who is the ultimate

beneficiary, does not accept the inheritance, or dies before the fiduciary, the substitution shall lapse and the fiduciary shall be the absolute owner of the properties.

184. *Nullity of the substitution.*— The nullity of the clause relating to fide-commissary substitution does not render the institution of the heir or the appointment of the legatee null and void. The fide-commissary clause only shall be deemed to be non-existent.

185. *Dispositions which are not analogous to fidei.*— *commissum.* Dispositions whereby the testator leaves the usufruct to one person and the naked ownership to another or successive usufructs are not fide-commissary substitutions.

186. *Deemed fidei commissum.*— (1) (a) Dispositions made subject to a condition prohibiting alienation inter vivos and

(b) dispositions which appoint a third person to take what is left from the inheritance or the legacy, on the death of the heir or of the legatee, are deemed to be fidei-commissum and as such valid upto one degree.

(2) In cases covered by clause (b) of sub-section (1), the fiduciary shall be entitled to alienate only when he does not have any properties of his own, apart from his residential house, and upon obtaining written consent of the fidei-commissarius for the purpose or upon his consent being dispensed with by an order of the Court.

187. *Encumbrances in favour of paupers, etc.*— The dispositions which impose on the heir or the legatee the obligation to pay successive sums of money in favour of paupers, or in favour of any public utility institution or foundation are valid. In this case, however, the burden shall be charged on specific assets and such heir or legatee shall be allowed to capitalize, or convert the instalments into corresponding capital in money.

188. *Irregular fidei-commissum.*— When the testator makes a disposition for a public purpose, the testator may provide that in case the institution which has to carry out the will of the testator is extinguished, the same properties shall go to another institution or legal body nominated by him.

189. *Applicability to past and future fidei-commissum.*— The provisions of the preceding sections are applicable to past and future fidei-commissum.

Disinheritance

190. *Disinheritance.*— The forced heirs may be deprived by the testator of their legitime or be disinherited by declaring his wish in the will, only when the law expressly permits him to do so.

191. *Grounds for disinheritance.*— The testator may in his will disinherit by expressly declaring that he does so, disclosing the grounds on which he disinherits, the following persons:—

(a) the presumed heir when he is convicted for an offence intentionally committed against the testator, his spouse, ascendants, brothers, adopter or adoptee, punishable with imprisonment of more than six months;

(b) the presumed heir who has been convicted for having lodged malicious prosecution or for perjury against any of the persons mentioned in the clause (a) above;

(c) the presumptive heir who, without sufficient cause, refused to maintain the testator and or his spouse.

192. *Effects of disinheritance.*— The descendants of the disinherited persons, who survive the testator, shall be entitled to the legitime which their ascendant was deprived of, but the ascendant who was disinherited is not entitled to enjoy the usufruct of the legitime received by his descendants.

193. *Burden of proof.*— When the ground for disinheritance is contested, the burden of proving that such ground exists shall be on the persons who benefit from the disinheritance.

194. *Failure to mention ground or irrelevant ground.*— When the testator declares that he disinherits without clearly mentioning the ground or when the ground is not proved or the ground is unlawful, the dispositions of the testator affecting the legitime of the disinherited heir, are void to that extent.

195. *Right to maintenance of the disinherited heir.*— When the disinherited heir has no means of subsistence, the beneficiary of the assets of

which the disinherited heir has been deprived is bound to provide maintenance to him but not beyond the income of the said assets, unless the said maintenance is due for any other reason.

196. *Period of limitation to challenge disinheritance.*— The person who has been disinherited and wishes to challenge the disinheritance may file a suit within three years from the date of knowledge of the will or the date of death of the testator, whichever is latter.

CHAPTER XII

Wills

197. *Concept of will.*— (1) A will is an unilateral act whereby a person makes disposition of the whole or a part of his estate to take effect upon his death.

(2) All dispositions which are by law permitted to be included in a will are valid if done with all the formalities required to make a will, notwithstanding that they do not contain disposition of assets.

198. *Will is a personal act.*— A will is a personal act. It shall not be lawful to make a will through an attorney nor to leave it to the discretion of another person, either as regards the institution of heirs or appointment of legatees or as regards the subject matter of the inheritance or as regards the execution of the will.

However, the testator may entrust the partition or the inheritance to a third party when he institutes or appoints a class of persons as heirs or legatees.

199. *Will dependant upon instruction.*— Dispositions which (a) depend on instructions secretly given to another person or (b) refer to documents which are not authentic or are not written and signed by the testator or (c) are made in favour of uncertain persons, who cannot be ascertained in any manner, shall not take effect.

200. *Disposition in favour of unnamed relatives.*— Dispositions in favour of the relatives of the testator or in favour of relatives of another person without specifically designating the person, shall be presumed to have been made in favour of the nearest relatives of the testator or of the person indicated, as per the order of legal succession.

201. *Conditional disposition.*— The testator may either make an unconditional disposition of his estate or he may dispose of his estate subject to conditions, provided such conditions are not absolutely or relatively impossible of performance or contrary to law, morality or public policy. A condition which is impossible of performance or contrary to law morality or public policy shall be presumed to be inexistent and shall not adversely affect the heirs or legatees notwithstanding that the testator has provided to the contrary.

202. *Obstruction to fulfillment of condition.*— Where a person who is interested in the non-performance of the condition, obstructs its fulfillment, the condition is presumed to have been fulfilled.

203. *Reason contrary to law.*— Where the testator gives the reason or motive for making the will and the reason or motive, whether true or false, is contrary to law, the disposition shall be null and void.

204. *Disposition where time for commencement or cessation of heirship is fixed.*— Where the testator fixes a time limit from which the institution of the heirs shall commence or cease, such a declaration shall be deemed as not written by the testator.

205. *Will obtained by coercion, undue influence, deceit, or fraud.*— (1) A will obtained by coercion, undue influence or by deceit or fraud, is voidable.

(2) The intestate heir forfeits his right to the inheritance when by deceit, fraud, undue influence or coercion he had prevented the estate leaver from making a will and the inheritance shall devolve on the person upon whom it would devolve, had such heir not existed.

206. *Duty of authorities.*— An administrative authority which comes to know that a person is preventing another from making a will is duty bound to go promptly to the house of the person so prevented with a Special Notary and two witnesses. Upon verifying that the information is true, set the said person free to make a will and he shall also cause a report to be written and forwarded to the Assistant Public Prosecutors/ Public Prosecutor.

A person who prevents another from making a will shall be liable to be prosecuted.

207. *When expressions are insufficient.*— A will wherein the testator has not expressed clearly and fully his wish but only by signs and monosyllables in answer to questions put to him, is null and void.

208. *Prohibition imposed by testator to challenge his will.*— It shall not be lawful for the testator to prohibit his legal heirs from challenging the validity of his will, when such will is null under the law.

209. *Joint wills.*— It shall not be lawful for two or more persons to make a will jointly in the same instrument, whether for their common benefit or for the benefit of third parties.

210. *Revocation of will.*— (1) A will may be freely revoked by the testator fully or in part by another will or by a deed before the Special Notary with the same formal requirements.

(2) It shall not be lawful for the testator to renounce his right to revoke the will.

(3) When the testator alienates the bequeathed thing before his death, the will shall stand revoked pro tanto.

211. *Implied revocation.*— (1) Where a subsequent will is made without making a reference to the earlier one, the subsequent will revokes the earlier will to the extent of its inconsistency only.

(2) Where there are two wills of the same date and it is not possible to ascertain which of them is later in point of time, the contradictory or inconsistent dispositions in both the wills shall be deemed inoperative.

212. *Effect of will which has lapsed.*— The revocation of a will shall take effect notwithstanding that the subsequent will lapses on account of the incapacity of the heir or of the legatee appointed therein or on account of the relinquishment of the inheritance by the heir or by the legatee.

213. *Restoration of will.*— Where the testator revokes the subsequent will and declares that he wishes that his earlier will shall subsist, the earlier will shall stand restored.

214. *When testamentary dispositions lapse.*— A testamentary disposition shall lapse and

become ineffective in relation to the heir or the legatee,—

(a) where the heir or legatee dies before the testator;

(b) where the heir is instituted or the legacy is left subject to a condition and the heir or legatee dies before the condition is fulfilled;

(c) where the heir or the legatee is under a disability to acquire the inheritance;

(d) where the heir or the legatee renounces his rights.

215. Effect of ignorance of existence of children.— If the testator had children or other descendants and he did not know that he had children or other descendants or he thought that they were dead or where the children are born to the testator after his death or where the children are born to the testator before his death but after the will was made, the will shall be valid only to the extent of the disposable portion of the testator, in accordance with section 141.

216 Interpretation of wills.— (1) Where any doubt arises as to the interpretation of a testamentary disposition, the intention of the testator shall be gathered from the will and accordingly carried out.

(2) When the words of a will are unambiguous, but it is found from extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

217. Object contrary to law, morality or policy.— A testamentary disposition is void when from its interpretation it follows that the will was intended essentially for an object contrary to law, morality or public policy.

Who may make a Will and Acquire by Will

218. Capacity to make a will.— A person who by law is not expressly forbidden from making a will, may make a will.

219. Incapacity to make a will.— (1) A person who is not in his full senses or a person of either sex under 18 years of age, is incompetent to make

a will. Blind persons, or persons who are unable or do not know to read are incompetent to make closed wills.

(2) The capacity of the testator to make a will is determined at the time when the will is made.

220. Restrictions on disposition of community assets.— A disposition of specific and determined properties by a person who is married under the regime of general community of assets is null and void, unless:-

(a) the assets disposed of are allotted to him in a subsequent partition, or

(b) they do not form part of the community, or

(c) the disposition has been made by one of the spouses in favour of the other, or

(d) the other spouse has in a document drawn by a Special Notary given consent to the said disposition

221. Restrictions on disposing of specific assets of the inheritance.— (1) It shall not be lawful for a co-heir to dispose of any specific asset of the inheritance or right to a part of specific assets, unless such asset or right to such part, is allotted to him in a partition.

(2) The disposition made in contravention of this section shall be null and void.

222. Relative incapacity of sick person.— A will made by a sick person in favour of the physician or nurse who attended to him during his illness or in favour of the priest who assisted him spiritually during his illness shall not take effect if the sick person dies of that illness.

However, (a) a legacy by way of remuneration for the services rendered to the sick person when such person was not paid any remuneration for the services or (b) a disposition made in favour of the descendants, ascendants, collaterals till the third degree or to the spouse of the testator, are valid.

223. Disposition in favour of a person who has rendered domestic help or care and assistance.— A disposition made by a sick and old person, having ascendants, descendants, collateral till the

fourth degree or spouse, in favour of a person who has rendered domestic help or care and assistance to such person shall not exceed one third of the value of inheritance. However, a disposition made in favour of ascendants and descendants, collateral till the fourth degree or the spouse of the testator is valid.

224. Relative incapacity - Disposition in favour of guardian or manager of assets.— A disposition made by a person who is interdicted or under disability in favour of his guardian or manager of his assets, even if the accounts of the management have been already approved, shall be void.

225. Relative incapacity - Disposition by adulterous spouse.— Where the adultery is proved in Court, either in criminal or civil proceeding, before the death of the testator, the adulterous spouse shall be incompetent to make a disposition in favour of the partner in the adultery.

226. Relative incapacity - Disposition in favour of the Special Notary.— The testator shall be incompetent to make a disposition in favour of the Special Notary who draws his will or certifies his closed will or in favour of the person who writes the will for him or in favour of the witnesses to, or interpreter of, the will or to the record of approval or certification of the closed will.

227. Extent of nullity.— Only that part of the testamentary disposition which is hit by the provisions which refer to the relative incapacity of the testator shall be null and void.

228. Restrictions on impairment of mandatory share.— Persons who are bound by law to reserve the legitime may dispose of only the disposable portion.

229. Who may receive by will.— (1) Only living persons, including an embryo, may acquire by will. The embryo is deemed to exist when born alive and with human figure within 300 days from the death of the testator.

(2) However, the disposition is valid even when the future heir or legatee is born beyond the period of 300 days from the date of the death of the testator, if the disposition is in favour of the children yet to be born who are descendants in the first degree of certain or specified persons alive at the time of the death of the testator.

230. Relevant time to determine capacity to acquire by will.— The relevant time to determine the capacity to acquire by will is the time of the testator's death. Where an heir is instituted subject to condition or where the legacy is left subject to conditions, the relevant time to determine the capacity to acquire by will is not only the date of the testator's death but also the time of fulfillment of the condition.

231. Consequence of incompetence to acquire by legal succession.— A person who is incompetent to acquire by legal succession as provided in section 9 is incompetent to acquire by testamentary succession.

232. Consequences of refusal to act as executor or guardian or their removal.— The executor who refuses to accept the office or who, having accepted the office, is removed therefrom on account of mismanagement and so also the testamentary guardian who refuses the office or is removed therefrom, forfeits the right to whatever is bequeathed to him by the testator.

233. Capacity of corporate bodies.— Corporate bodies, associations, trusts, or other legal entities may succeed by will as heirs or legatees.

234. Fictitious disposition.— (1) A will made in favour of an incompetent person by ostensibly making it in favour of another person with an understanding that it will benefit the incompetent person or through an intermediary shall be null and void.

(2) A testamentary disposition is deemed to have been made through a fictitious person when it is made in favour of the spouse of the person who is incompetent to acquire by will or to a person whose presumptive heir he is or when made in favour of a third party who has agreed with the person who is incompetent to acquire by will that he will transmit the benefit of the will in favour of the latter.

Types of Wills

235. Types of wills.— Wills may be of the following categories:-

- (a) Public;
- (b) Printed open;
- (c) Closed or sealed;
- (d) Wills made outside Goa.

236. *Public will.*— A testator who wishes to make a public will has to declare his last wish before any Special Notary in the presence of two witnesses, worthy of credit so that he may record the will in the Book of Wills.

237. *Printed open will.*— A testator who knows to read, may opt to present to the Special Notary a computer generated printout of the operative part of his will on a standard paper of the size of 29.7 cms x 21 cms entitled 'open will' and declare before the Special Notary that the printout contains his last wish in the presence of two credit worthy witnesses, who shall identify the testator, and certify that the testator is in his senses and free from coercion.

238. *Closed or sealed will.*— Closed or a sealed Will shall be written and signed by the testator, or it may be written by another person at the request of the testator and signed by the testator. The person who signs the will shall initial all its pages. The testator is exempted from signing the will where he is unable to sign it; however, the fact that he is unable to sign the will shall be recorded in the will by the Special Notary.

239. *Incompetence to make a closed will.*— Persons who do not know or are unable to read are not competent to make dispositions by way of a closed will.

240. *Failure to present the closed will.*— Where a person who is in possession of the closed will, and, where the will is made by an absent person, does not present it or, in case of the testator's death, does not present it within thirty days from the date of the knowledge of the death, he shall be liable to pay damages. Where the person who fails to present the will is guilty of deceit, he shall, besides being liable to pay damages, forfeit his right, if any, to the inheritance of the testator and shall also be liable for criminal prosecution.

241. *Fraudulent removal of will.*— Any person who fraudulently removes the will from the effects of the testator or from the possession of any person with whom it is deposited shall be subject to pay damages, forfeit his right to the inheritance and shall also be liable for criminal prosecution.

242. *Where the closed will is found open.*— Where the closed will is found opened, whether amidst the effects of the testator or in the possession of a third party but without any other

defect, it shall not be annulled for that reason. In such a case, the will shall be presented as it is to the Special Notary of the sub district, who shall draw a record stating the above facts in accordance with sections 342, 343, 344 and 345.

243. *Tampered or torn will.*— Where the will is found open and tampered with, or torn, the following provisions shall apply:—

(a) Where the will is found cancelled and obliterated, or torn, either amidst the effects of the testator or in the possession of a third party, to such an extent that it is not possible to read the original disposition, it shall be deemed to be non-existent;

(b) Where it is proved that any person other than the testator has tampered with the will, the provisions of sections 240 and 241 which are applicable to a person who fraudulently withholds or removes the will shall be applicable to such person.

244. *Presumption as to who is responsible.*— Where the will is tampered with, it shall be presumed that the tampering was done by the person to whom the will was entrusted until the contrary is proved.

245. *Torn will found amidst the effects of the testator.*— Where the will is found to be torn or reduced to pieces amidst the effects of the testator, the will shall be deemed to be non-existent, notwithstanding that it is possible to put the pieces together and read the disposition, unless it has already been proved that it was torn or reduced to pieces after the death of the testator or was caused by him when he was of unsound mind.

246. *Wills under this Code to become operative upon death.*— When a public will, printed open will or closed will is made in accordance with the provisions of this Act, the will shall become operative and executable immediately upon the death of the testator and no probate is required.

247. *Wills made outside Goa.*— A will is valid as to form if it is made in conformity with the law of the place of making at the time it was made.

CHAPTER XIII

Management of the Inheritance Head of the Family

248. To whom the office of head of the family belongs.— (1) The office of head of the family belongs in order of priority to—

(a) the surviving spouse, unless the spouse does not have a share in the assets to be partitioned and does not have descendants, who are still minors, as heirs;

(b) the children, who are not under a disability, and in default of children, other descendants who are not under a disability;

(c) the other heirs, who are not -under a disability.

(2) In the category of children, other descendants and other heirs, the following shall have preference:-

(a) the heirs who are living with the deceased over the others;

(b) where there are more than one in the same circumstances, the elder shall have preference.

(3) The heir, who was residing permanently in the company of the estate leaver only, shall be deemed to be the heir living with the estate leaver.

249. When the guardian is appointed head of the family.— Where there is no surviving spouse nor heirs referred to in section 248, the Court shall appoint the guardian of the heirs under disability as the head of the family and where there is more than one group of heirs with different guardians, such guardian as is chosen by the Court and, till such time there is no guardian appointed by the Court, the Court shall appoint provisionally a receiver from amongst the nearer relatives of the heirs under disability.

250. Eldest of the spouses to be the head of the family.— Where an inventory is instituted, the head of the family shall, where the marriage is governed by the regime of community of assets, belong to the eldest spouse and where the marriage is governed by the regime of separation of assets, to the spouse who owns the assets; if there are any community assets, the eldest shall be the head of the family in respect thereof.

251. Special head of the family.— The co-heirs who on the date of the opening of the inheritance, were in possession of certain properties of the inheritance and so also the heirs who have to restitute gifted properties to the estate shall be deemed heads of the family in respect of such properties.

252. Duty to initiate the inventory.— The head of the family is duty bound to initiate an inventory where there is a co-heir who is a minor or under disability.

253. When half of the income may be distributed.— After the assets and liabilities have been listed in the inventory proceeding, any party may apply that half of the income of the properties which have not been bequeathed be distributed among the co-heirs taking into consideration the value which has been attributed to them; the head of the family, who fails to comply with such direction issued by the Court, shall be removed forthwith and shall be liable to pay compensation for the damage caused.

254. Rights and duties of the head of the family.— The head of the family, as manager of the estate, shall receive the fruits and profits of the properties in his possession and shall meet the normal liabilities and shall have the duty to render accounts in case the usufruct of the said properties does not belong to him.

However, the head of the family shall not alienate any properties of the estate other than fruits or other things which cannot be preserved without fear of deterioration.

255. Head of the family when there are only legacies.— Where the inheritance is distributed by way of legacies only, the most benefited shall be the head of the family; and if all circumstances are equal, the eldest shall have priority.

256. When the head of the family seeks exemption or is removed.— If the persons referred to in the preceding section of this Chapter, seek exemption or are removed, the Court shall appoint suo motu or on application by an interested party, the head of the family.

Notwithstanding the above provisions, the parties may by mutual consent agree that the management of the inheritance and the functions of the head of the family be discharged by any other person.

257. *Concealment of assets of the inheritance by the head of the family or heir.*— (1) The moiety holder or heir who fraudulently conceals assets of the inheritance, whether as head of the family or not, forfeits in favour of the heirs or co-heirs, as the case may be, the right he may have to the concealed assets.

(2) The person who conceals assets is deemed to be merely in custody of those assets and the Court may order him that they be handed over to the head of the family.

258. *Fraudulent description.*— The head of the family who fraudulently describes credits, rights or encumbrances which are founded on sham, false or falsified documents of title, shall be liable to pay damages for the injury caused and he shall be criminally liable.

259. *Fraudulent concealment of documents.*— The head of the family, who conceals fraudulently documents of title necessary to take cognizance of the nature of, or of the encumbrances on, the partible assets, shall be liable for the losses caused by such omission.

Executor

260. *Executor appointed by the testator.*— The testator may appoint one or more persons to carry out his will in whole or in part. Such persons are called executors.

261. *Who may be executor.*— Only a person who has the capacity to contract may be appointed as executor.

262. *Appointment of executor by Court.*— The Court may appoint an executor when the heirs do not agree on the choice of the executor. Where there are minor, interdicted or absent heirs, any interested party may apply to the Court that an executor be appointed. The applicant shall disclose who are the other interested parties and he may propose the person who in his view is best qualified for being appointed executor.

263. *Where the executor declines to accept the office.*— The appointed executors may decline to accept the appointment. In this event, however, if a legacy is left to the executor as compensation for discharging the functions of executor, he shall not be entitled to claim the legacy.

264. *Time limit to decline appointment.*— The appointed executor who is not willing to accept the appointment, shall, within thirty days from the knowledge of the will, so inform, by registered post, the Special Notary of the place where the inheritance opens with a copy to any one of the beneficiaries under the will. In case of his failure to inform the authorities mentioned above, he shall be liable to pay damages.

265. *When the executor may resign.*— The appointed executor who has accepted the office, may quit the office upon showing just cause such as disability due to illness, absence for a long period or incompatibility with the discharge of a public office and upon obtaining an order of the Court competent in terms of section 374. Such Order shall be made after hearing the parties. In case he quits the office without order of the competent Court, he shall be liable to pay damages.

266. *Office of the executor is gratuitous.*— The office of the executor is gratuitous, unless remuneration is provided for by the testator, in the will.

267. *Impediments to become executor.*— Where there is an impediment which does not permit the person appointed as executor to assume the office or the executor is discharged, the heirs shall carry out the purpose of the will and they shall be subject to the following provisions:-

(a) where the hereditary shares are not equal, the office shall vest in the heir who is the most benefited;

(b) where the hereditary shares are equal, the parties shall appoint the executor from amongst them, and, in case of disagreement or when one of them is a minor or an interdict or an absent person, the competent Court shall appoint one amongst them.

268. *Powers of the executor.*— The executor shall have such powers as the testator may have conferred upon him in accordance with law. However, he shall cease to function as such upon the appointment of the head of the family in an inventory proceeding. He shall nevertheless be entitled to intervene in the inventory proceeding to bring to the notice of the Court the directions contained in the will.

269. *General duties of the executor.*— Where the testator does not specify the duties of the executor, they shall be as follows:

(i) to make arrangements for the funeral of the testator and to pay the respective expenses and religious ceremonies in accordance with the wishes of the testator or, where the will makes no provision in this regard, according to the customary usages;

(ii) to cause registration of the closed will, if it is in his custody, before the competent authority, within thirty days from the date of the knowledge of the death of the testator;

(iii) to carry out or execute the testamentary dispositions and to defend, if necessary, their validity in or outside the Court;

(iv) to allow the parties to take inspection of the will, if it is in his custody, and to allow true copies thereof to be taken, when so requested.

270. Duty to initiate inventory.— (1) (a) The executor shall institute inventory proceeding where there are minor, interdicted or absent heirs and legatees.

(b) Where the testator has empowered the executor to utilize the income of a certain part of the estate for the benefit of a charitable or public utility foundation or trust or institution, which is intended to be created by the will or which does not have a legal personality, the executor shall initiate inventory proceeding and apply for the sale of such part of the estate by public auction.

(2) The procedure laid down in clause (b) of sub-section (1) shall not be applicable where the inheritance or legacy was left for the aforesaid purpose to an institution with legal personality or a trust already in existence.

271. When the testator leaves forced heirs.— Where the testator leaves forced heirs, the testator shall not authorize the executor to take charge of the estate. However, the testator may direct that the forced heirs shall not take charge thereof, unless inventory proceeding are instituted and the executor is served.

272. Where the testator does not leave forced heirs.— (a) Where the testator leaves heirs who are not forced heirs, he may authorize the executor to take charge of the estate but he shall not exempt the executor from instituting inventory proceeding.

(b) Such heirs may prevent the executor from taking charge of the estate by providing to him the necessary amount to meet the expenses for the discharge of his functions.

(c) Where there are no funds in the estate sufficient to meet the expenses of the executor and the heirs are not willing or are unable to advance the necessary amount, it shall be lawful for the executor to cause the sale of movables and, if the amount realized is not sufficient, to cause the sale of one or more immovables after hearing the heirs; if any of the heirs is a minor, absent person or an interdict, the sale of the movables or immovable shall be done by public auction.

273. Time limit to carry out the will.— (1) When no time limit has been fixed in the will for its execution, the executor shall carry it out within one year from the date on which he assumes office or from the date on which the litigation, if any, with regard to the validity or nullity of the will, has come to an end.

(2) However, it shall always be lawful for the executor to supervise and take care of the execution of the dispositions which have not been carried out and to apply to the Court for such preventive reliefs as may be necessary.

(3) When the income is to be utilised for the benefit of a charitable or public utility institution or trust, the executor shall continue the execution of the will till such time as may be necessary to carry out the legacy or legacies, if the testator has so directed, subject to section 270.

(4) Where the executor has failed to discharge his duties within the time fixed, he shall forfeit the remuneration left to him, and the will shall be executed, by the persons who have the duty to execute it, as if no executor has been appointed.

274. Joint executors.— (1) Where more than one executor has accepted the office and later on one or more of them have abstained from participating in the execution of the will, the execution carried out by the others shall be valid; but all of them shall be jointly liable for the assets of the estate of which they have taken charge.

(2) Where the executors who have accepted the office do not arrive at a consensus on the

manner in which the will is to be executed, the executorship shall lapse and the will shall be executed by the person who has the duty to do so as if no executors had been appointed.

275. Duty to render accounts.— The executor shall render accounts of his management to the heirs or their lawful representatives. For this purpose, the executor may, if necessary, file an application to the competent Court. Where inventory proceedings are instituted, such an application shall be filed in the same proceeding.

276. Office of executor not transferable or heritable.— The office of the executor is neither transferable nor heritable nor can it be delegated.

277. Accretion of remuneration.— Where the testator has bequeathed to joint executors, the part of the remuneration of the executor who has been discharged or of the one who is unable to accept the office shall be added to the remuneration of the others.

278. Expenses of the executor.— The expenses incurred by the executor in the discharge of his duties shall be met from the mass of the inheritance. Petty expenses for which usually no receipt is issued shall be approved on the basis of an affidavit of the said executor.

279. When the executor is guilty of deceit or fraud.— The executor who is guilty of deceit or fraud in the discharge of his duties shall be liable to pay damages and may be removed from his office by order of the Court at the instance of the parties. The procedure for removal is provided in section 385.

CHAPTER XIV

Partition

280. Effects of partition.— The partition of the inheritance in the inventory proceeding and made in respect of which there has been no objection, confers on the parties exclusive ownership of the properties respectively allotted to them, as against other parties to the proceeding.

281. Consequences of co-heir and moiety holder being deprived of possession.— (1) The co-heirs and moiety holder shall be mutually liable to indemnify the co-heir or moiety holder, who is deprived of possession of the property allotted to him, by a person having better title thereto.

(2) Such liability ceases when there is agreement to the contrary or if the dispossession takes place due to the fault of the person dispossessed or due to a cause which has arisen subsequent to the partition.

(3) The dispossessed person shall be indemnified by the co-heirs and moiety holder in proportion to their shares but where any of them has become insolvent, the remaining parties shall be liable for his share in the said proportion, after deducting the share of the dispossessed party.

282. Limitation for suit for damages.— A suit for recovery of the compensation set out in the foregoing section shall be filed within a period of three years, and other provisions of the Limitation Act, 1963 (Central Act 36 of 1963) shall be applicable.

283. Partition done out of court.— (a) An inheritance can be partitioned by a deed out of Court where the mandatory inventory is not required under the provisions of this Act.

(b) No partition of an inheritance shall be done out of Court unless it is preceded by a deed of declaration of heirship.

284. Rescission in case of out of Court partition.— Partitions of inheritance made out of Court may be rescinded only on the grounds on which contracts may be rescinded.

CHAPTER XV

Supplemental Provisions

285. Sale of share in undivided inheritance: right of pre-emption.— The moiety holder and the co-heir shall have the right of pre-emption when any share in an undivided inheritance is sold to a stranger, without prior notice to him.

286. Notice to moiety holder or co-heirs.— A co-heir or a moiety holder who intends to sell his respective share or moiety in an undivided inheritance to strangers may, however, give notice of the intended sale by instituting inventory proceeding to enable the parties entitled to pre-empt to exercise their right in accordance with section 397.

287. Sham sale.— (1) A sale, whether made directly or through an intermediary, to defeat the provisions imposing restrictions on the power to transfer shall be null.

(2) When the sale is made by the spouse of the person who is incompetent to acquire or by a person whose presumed heir he is or when made with a third party who has agreed with the person who is incompetent to acquire that he will transmit the benefits in favour of the latter, such person is deemed to be the intermediary.

288. *Creation of easement.*— (1) Where any immovable property is divided by metes and bounds in the inventory proceeding and it is necessary to create an easement, such easement of necessity shall be created and recorded in such proceeding.

(2) Nothing shall prevent the parties from creating an easement by a separate deed with the consent of parties after the inventory is concluded.

(3) Where the provisions of sub-section (1) are not followed, the respective owner of the landlocked property may file a suit for creation of such easement and the compensation payable to the servient owner as well as the costs of the suit shall be shared by all the parties to inventory proceeding.

(4) Where an inheritance is partitioned amicably by a deed and it is necessary to create an easement but such easement is not created in the deed, the respective owner of the landlocked property shall have the right to file a suit as provided in sub-section (3).

Usufruct

289. *Definition of usufruct.*— Usufruct is a right to full enjoyment of an asset or a right for a specified period, without changing its form or substance.

290. *Constitution of usufruct.*— Usufruct may be constituted by a registered agreement, by will or by law in favour of one or more persons simultaneously or successively, provided they are living at the time the right of the first usufructuary becomes effective.

291. *Extinguishment of usufruct.* — (a) Unless provided to the contrary, the usufruct constituted by agreement or by will in favour of several persons jointly extinguishes upon death of the last surviving usufructuary.

(b) Without prejudice to the provisions hereinabove, usufruct shall not exceed the life

of the usufructuary; where it is constituted in favour of a body having legal personality, the usufruct shall last for a period of 30 years only.

292. *Right of the usufructuary.*— The usufructuary may use, enjoy and manage the thing or right as a prudent man would do.

293. *Determination of usufruct.*— The value of the usufruct, use and habitation shall be determined by multiplying the annual income by ten, but the value may be enhanced or decreased depending upon the probable duration of the respective rights.

294. *Emphyteusis.*— (1) Emphyteusis is a conveyance whereby the owner of any property transfers the beneficial ownership (dominium utile) to another and the latter binds himself to pay him annually certain determined periodic sum, which is known as emphyteutic fee. Upon such conveyance, the owner of the property shall be the owner of the direct domain only and the transferee shall be the beneficial owner.

(2) Emphyteusis is hereditary.

(3) The beneficial owner shall have the right not only to enjoy but also to alienate, mortgage, gift and exchange the property.

(4) The owner of the direct domain shall have the right to receive the emphyteutic fee only.

295. *Divisibility of the emphyteusis.*— (a) The property granted in emphyteusis is not divisible into plots, unless the owner of the direct domain consents to it.

(b) The partition of its value amongst the heirs is done by estimation, and the emphyteusis shall be allotted to one of them in accordance with their agreement.

(c) Where there is no agreement, the emphyteusis shall be put to licitation.

(d) Where none of the heirs is willing to accept the allotment of the emphyteusis, the property shall be sold and the proceeds shall be divided amongst the heirs.

(e) If the owner of the direct domain consents to the division into plots, each plot shall be a separate emphyteusis and the owner of the direct domain may demand the respective

emphyteutic fee of each of the beneficial owners according to the allotment done.

(f) The division and the allotment shall not be valid unless done by a registered document wherein the owner of the direct domain gives his consent. In this event, the emphyteutic fee payable by each heir may be increased on account of the trouble that the owner of the direct domain has to take to collect the divided emphyteutic fee.

(g) Where the emphyteusis is divided without the written consent of the owner of the direct domain, each of the plots shall be liable for the entire emphyteutic fee.

296. *Acts contrary to law.*— Any act which is contrary to law, whether prohibitory or mandatory, shall be null and void unless such law provides otherwise.

Such nullity may, however, be cured when the interested parties give their consent provided that the law which has been contravened is not relating to public order or public policy.

PART III

SPECIAL NOTARIES

CHAPTER XVI

Establishment of District Special Notaries and Special Notaries

297. *District and Sub-Districts.*— (1) For the purposes of this Act, the State Government shall form Districts and Sub- Districts, and shall prescribe, and may alter, the limits of such districts and sub districts.

(2) The formation of districts and sub-districts and every alteration of such limits shall be notified in the Official Gazette.

(3) Every such alteration shall take effect on such future date as may be mentioned in the Notification.

298. *Special Notaries.*— The State Government may appoint in each District one District Special Notary and in each sub-district one or more Special Notaries. The Special Notary shall exercise the powers conferred on him by this Acts within such

sub-district or sub-districts as the State Government may by order determine. The State Government may also appoint joint Special Notaries in any sub-district or sub-districts, whenever necessary.

299. *Offices of the District Special Notary and the Special Notary.*— The State Government shall establish in every district an office to be styled as the office of the District Special Notary and in every sub-district an office or offices to be styled as the office of the Special Notary or the offices of the joint Special Notaries, as the case may be.

300. *Absence of District Special Notary.*— When any District Special Notary is absent on leave or otherwise the State Special Notary shall make necessary arrangements of substitution, either directing any other District Special Notary or a Special Notary to act as such District Special Notary during the absence, unless the State Government makes an appointment in this regard. However, where a Special Notary is directed to act as District Special Notary he shall not hear appeals against his own orders.

301. *Absence of Special Notary.*— When any Special Notary is absent, or when his office is temporarily vacant, the District Special Notary shall make the necessary arrangement of substitution directing any other special notary to act as such special notary during the absence, unless the State Government makes appointment in this regard.

302. *Seal of the District Special Notary and the Special Notary.*— The several District Special Notaries and the Special Notaries shall use an embossed seal bearing the following inscription “The seal of the District Special Notary of _____ District” or “the Seal of the Special Notary of _____ Sub-District”.

303. *State Special Notary.*— The State government may appoint a State Special Notary for the State of Goa, who shall have powers of superintendence and control over the District Special Notaries and the Special Notaries.

304. *Qualifications.*— A person shall not be qualified to be a State Special Notary, District Special Notary and Special Notary unless he is a graduate in law and possesses such other qualifications and experienced as may be prescribed.

CHAPTER XVII

Functions of the Special Notary

305. *Function of the Special Notary.*— The function of the Special Notary is to give authenticity to the instruments which he is empowered to draw in accordance with law.

306. *Status of the Special Notary.*— The Special Notary is public official appointed by the Government to draw authentic instrument.

307. *Evidentiary value of the documents drawn by the Special Notary.*— The instrument recorded by the Special Notary constitutes full proof of the veracity of the act, done by him and the veracity of the facts which have occurred in his presence or which he has certified to be true and was competent to so certify, in relation to the parties and their successors- in- interest who have intervened in such instrument, unless it is proved that the document itself is false.

308. *What instruments are to be drawn only by way of authentic document.*— The instruments mentioned below shall be proved only by authentic document and no other evidence is admissible to prove them:

- a) Public Will;
- b) Record of printed open will;
- c) Record of approval of the closed will;
- d) Record of the opening of the closed will;
- e) Instrument of consent to the will by the spouse of the testator or the testatrix;
- f) Instrument of Revocation of will;
- g) Instrument of rehabilitation of a person unworthy to succeed;
- h) Instrument of renunciation of inheritance;
- i) Instrument of declaration of heirship;
- j) Instrument of ante nuptial agreement;
- k) Deed of adoption under the law in force in Goa;
- l) Special Power of Attorney for acts to be done under this Act;
- m) Instrument of declaration of the option exercised under clauses (c) and (d) of sub-section (4) of section 1.

CHAPTER XVIII

Books, Indices and Fire Proof Boxes

309. *Obligation of the State to provide books to the Special Notary.*— (1) The State government shall provide for the office of every Special Notary, District Special Notary and State Special Notary the books necessary for the purposes of this Act.

(2) The books so provided shall contain the forms prescribed and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title page by the District Judge of the respective district court or an additional district judge nominated by him.

(3) The State government shall supply to the office of the Special Notaries with a fire proof box, and shall in each sub-district make suitable provisions for the safe custody of the records connected with the State Special Notary.

(4) The State Government shall provide the embossed seals to the Special Notaries, District Special Notaries and the State Special Notary.

310. *Books to be maintained by the Special Notary and District Special Notary.*—

- (a) The Special Notaries shall maintain:-
 - (i) a daily register of instruments drawn under this Act;
 - (ii) a register of index of wills;
 - (iii) a book of Public Wills;
 - (iv) a register of printed open wills;
 - (v) a register of approval of closed wills;
 - (vi) a register of deposit of closed wills;
 - (vii) a register of opening of closed wills;
 - (viii) a register of return of closed wills;
 - (ix) a register of rehabilitation of a person unworthy to succeed;
 - (x) a register of refusal to act as executor;
 - (xi) a register of record of acquiescence given by the spouses;
 - (xii) a register of renunciation of inheritance, adoption, ante-nuptial agreements, revocation of wills, declaration of heirship, orders refusing to perform an act and

such other acts provided under law to be performed by the Special Notary;

(xiii) a register of Special power of Attorney;

(xiv) a register of declaration under Clause (c) and (d) of section 1;

(xv) a register of plans.

(xvi) a register of all other documents filed in his office;

(xvii) a register of index of other instruments;

(xviii) book of accounts of fees and stamp duty;

(b) The District Special Notary shall maintain a register of orders made in appeal against orders of the Special Notaries.

311. *Requirement of the notarial books.*— The notarial books shall have a record of their opening and closing, signed by the District Judge of the respective District Court or an Additional District Judge nominated by him.

312. *Indexes to be maintained.*— (1) The following indexes shall be maintained by the Special Notary:—

- a) index of the public open will;
- b) index of the printed open will;
- c) index of the closed will;
- d) index of other instruments;

(2) A copy of indexes of all wills shall be forwarded to the State Special Notary every three months by the tenth of the month following the trimester. The State special Notary shall maintain a consolidated index in his office.

313. *Maintenance and preservation of books and other records.*— (1) The Special Notary shall preserve the books, registers, documents and their indices maintained in his office. Only where it is necessary to draw a deed outside his office on special grounds, these books can be taken out of the office.

(2) The State Government shall provide the Special Notaries with proper premises and storage equipments.

(3) All such books, registers, and documents maintained by the Special Notary shall be forwarded for preservation, after a period of 30

years, to the Director of Archives who shall be bound to preserve them by using the latest scientific methods for preservation.

(4) In case of Criminal or any other investigation involving any document, a register or book maintained in the office of a Special Notary, such document, register or book shall not be taken out of his office but the investigating Police officer or an expert shall be allowed to take photographs of the such document for the required purpose.

(5) When in any case a Court calls for any document, book or register from the office of a Special Notary before it, such document, Book or register shall be returned to the Special Notary, immediately after it is examined and shall not be retained in Court records.

314. *Special Notaries to allow inspection of indices and give certified copies.*— (1) Subject to the payment of fees as prescribed in that behalf, the indices maintained by the Special Notary, shall be open for inspection by any person applying to inspect the same and subject to the provisions of section 353 copies of entries in such books shall be given to all person applying for such copies.

(2) All copies given under this section shall be signed and sealed by the Special Notary and shall be admissible in evidence as proof of the contents of the original documents. The certified copy shall contain an endorsement stating the number of the will or other instrument in the index.

315. *Power of the State Special Notary and District Notary to superintend and control Special Notaries.*— (1) Every Special Notary shall perform the duties of his office under the superintendence and control of the District Special Notary in whose District the office of such Special Notary is situated.

(2) Every District Special Notary shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act, which he considers necessary in respect of any act or omission of any Special Notary subordinate to him.

(3) The State Special Notary shall have authority to issue, whether on complaint or otherwise, any order consistent with this Code which he considers necessary in respect of any act or omission of any District Special Notary or Special Notary subordinate to him.

CHAPTER XIX

Powers of the District Special Notary and Special Notary

316. *Powers of the Special Notaries.*— The Special Notaries shall have powers to draw authentic documents such as (a) public wills, (b) record of printed open wills (c) instruments of consent to the will by the spouse of the testator testatrix, as the case may be (d) instruments of renunciation of inheritance, (e) record of approval of the closed wills, (f) ante nuptial agreements, (g) deeds of declaration of heirship, (h) adoption deeds and (i) such other acts which the Special Notary is authorized to perform by law.

317. *Power to administer oath.*— The Special Notary shall have powers also to administer oath to a person, whenever necessary, in connection with acts performed by him.

318. *Incompetence to act.*— The Special Notary shall not act in instruments and deeds where he or his spouse is a party or attorney or representative of a party or person having interest in the act or transaction; and also where any of the ascendant, descendant of the Special Notary, or brother and relative in the same degree or of his spouse is a party, interested party, attorney or representative of any party or person having an interest in the instrument or transaction.

319. *Duty of the Special Notary.*— The Special Notary shall be bound to render services, when requested, which are within his competence.

320. *When the Special Notary shall refuse to perform the act.*— The Special Notary shall refuse to perform the act:-

(a) If such act is forbidden by law;

(b) If the Special Notary doubts the mental faculties of any party unless one of the witnesses be a doctor and the Special Notary records that such doctor has certified that such party is in his full senses.

321. *Refusal to perform an act.*— (1) Order of refusal to record reasons:— When the Special Notary refuses in writing to perform an act, which

he is empowered to do, he shall make an order of refusal expeditiously and record his reasons for such order in his Book no. IX and endorse the words “refused to draw” on the draft document, if any is presented, and, on an application made by any person who has an interest in causing it to be drawn, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) *Application for reconsideration.*— The aggrieved party may call upon such Notary to reconsider his refusal.

(3) *Duty to forward to the District Special Notary the application for re-consideration.*— In the event the Special Notary does not reconsider the refusal within forty-eight hours, then he is bound to send the application for reconsideration to the District Special Notary as Appellate Authority, alongwith the respective documents and his report wherein he shall record reason for his refusal to perform the act. The District Special Notary shall give his decision affirming, reversing or altering such order. within 3 days.

322. *Order of the District Special Notary.*— (1) If the order of the District Special Notary direct the special notary to draw the document and the party appears before the Special Notary within 30 days from the date of the making of such order, the Special Notary shall comply with it.

(2) Every District Special Notary rejecting the appeal shall make an order and record his reasons for such order in his Register of orders passed in appeal; and, on an application made by any person who has an interested in causing it to be drawn, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(3) No appeal shall lie from an order of the District Special Notary.

323. *Suit in case of party being aggrieved by order of the District Special Notary.*— Any person aggrieved by an order of the District Special Notary may file a suit in the civil court having jurisdiction over the area where the office of the District Special Notary is situate for a decree directing the Special Notary to draw the document.

CHAPTER XX

Authentic Instrument in General

324. *Who may be witnesses identifiers and certifiers.*— (1) The following persons cannot be witnesses or identifiers or certifiers:—

- a) persons who are not in their full senses;
- b) minors;
- c) deaf, dumb and blind;
- d) the Special Notary and his spouse or their ascendants, descendants, brothers and sisters, brother-in-law, sister-in-law and his staff;
- e) persons directly interested in the deed;
- f) ascendants in the acts of the descendants and vice versa;
- g) father-in-law or mother-in-law in the acts of the son-in-law or daughter-in-law and vice versa;
- h) husband in the acts of the wife and vice versa;
- i) husband and wife together;

(2) A Special Notary may accept persons as witnesses or identifiers who are either known to him or who prove their identity by means of any official document such as voters identity card, PAN card, multi-purpose national identity card.

325. *Requisites of authentic documents.*— (1) The requisites of the authentic documents are as follows:—

i) the hour, date, month, year and the place where the document was drawn or signed when drawn outside the office and the statement that the Special Notary went there at the express request of the party;

ii) full name of the Special Notary, his designation as such Special Notary, and the address of his office;

iii) full names, age, marital status, professions and addresses of the parties, and of their attorney or representatives, if the latter intervened directly in the deed;

iv) a reference to the powers of attorney and other documents which prove they are attorneys or representatives, so also other documents relating to the acts or which are part and parcel of the latter, with the dates and other details which identify them. The power of

attorney executed abroad shall be countersigned by the Indian Diplomatic Agent or the Consular services and shall be duly stamped by the competent Collector in Goa;

v) the acknowledgement of the identity of the parties from his personal knowledge, from the statement of the identifiers who know them;

vi) reference of the oath taken by the interpreters and the reasons which required their intervention and the manner in which the interpreters ascertained the wishes of the parties and explained to them the contents of the documents;

vii) full names, age, status, professions and address of the witnesses, interpreters and identifiers and also of the persons who read the documents at the request of the parties;

viii) the statement of the party that he does not know to sign cannot sign;

ix) reference to the fact that the Special Notary has read aloud the documents to the parties in the simultaneous presence of the parties, the witnesses and other persons who have intervened and of the reading by the interpreter or by any of the parties or any other person at their request, when compulsory;

x) the errata memo describing the corrections, interlineations, alterations, words struck through or if any erasures before the signatures of parties, witnesses and Special Notary;

xi) signatures of the parties at the end of the text when they know or can sign and of the witnesses and other persons who have intervened;

xii) signature of the Special Notary which shall be made at the end of the document;

xiii) the value of the notarial stamp affixed shall be mentioned in the instrument;

xiv) the instrument shall be recorded in the language of the court. Where the party does not know such language, the page where the instrument is written shall be divided into two columns and in left column the instrument shall be recorded in the language of the court and in the right in the language known to the party. The translator shall intervene in the instrument and shall solemnly declare that the translation is true and correct.

The instrument shall be recorded continuously, without any blank space or blank line.

(2) The originals of powers of attorney given by the parties to the attorneys for intervening in a Notarial act have to be produced before the Special Notary who shall place them on record in his office.

326. *How instruments are to be recorded.*— (1) All instruments and deeds, including Wills, endorsements and approvals shall be drawn by the Special Notary in black ink and all words shall be recorded in extenso and figures in words.

(2) Drawing of the instrument and deed shall be in the presence of two witnesses who shall put their usual signatures at the end of such deed or instrument.

(3) The identity of parties in all instruments and deeds including the wills, may be done by any official identity card such voters identity card, PAN card, multi- purpose national identity card or may also be done by witnesses or on the personal knowledge of the Special Notary.

(4) Parties who know to write shall put their signatures as usual and also shall affix their left hand thumb impression. If there be no left thumb the impression of right thumb shall be affixed and in the absence of the right thumb also the impression of any other finger, shall be affixed and the finger used shall be specified by the Special Notary. In case affixation of impression of any finger is not possible or the party is not able to put his signature, the Special Notary shall make mention thereof in the deed and the deed shall be deemed valid.

(5) The Special Notary may appoint, at the expense of the party, an interpreter or translator when he requires such assistance.

327. *Dumb and deaf.*— (1) Dumb or deaf and dumb persons who know or can write shall state in writing in the document, before their signature, that they have read the deed and that they admit or acknowledge that the document is in accordance with their wish.

(2) In case a party is dumb or is deaf and dumb who does not know or cannot write, the signs with which he expresses his intentions should be understood by the witnesses and further an interpreter shall intervene in the acts. This fact shall be recorded in the deed.

(3) When one of the parties is blind the document shall be read twice, once by the Special

Notary and the second time by a person appointed by the party. This fact shall be recorded in the deed.

(4) The person appointed by the party shall intervene in the deed and solemnly declare that the interpretation is true and correct.

CHAPTER XXI

Public Open Will

328. *Identification of the testator and his condition.*— The Special Notary as well as the witnesses should know the testator or be able to certify his identity and further, the special Special Notary shall satisfy himself that the testator is in his perfect sense and free from coercion.

329. *Place, time and date of the will.*— The will shall be dated; indicating therein the place, hour, day, month and year and it shall be read out aloud in the presence of the said two witnesses, by the Special Notary, and by the testator if he so wishes, and signed by all.

330. *When a plan is attached to the will.*— Where the testator wishes to attach a plan to the will, or deed of consent, the Special Notary shall make an endorsement on the place recording the name of testator, the book number, the page and date of the will. The Special Notary shall also state at the end of will the file number and serial number of the plan. The plan shall be dated and signed by the testator, the witnesses and the Special Notary.

331. *When the testator does not know or is unable to write.*— When the testator does not know to write or is unable to write, the Special Notary shall so record in the will.

332. *When the testator is deaf.*— When the testator is entirely deaf but knows to read, he shall read his will, and, when he does not know to read, he shall appoint a person to read the will on his behalf, and in either case, in the presence of two witnesses. The person appointed shall intervene in the instrument.

333. *Formalities to be complied without break.*— All the formalities in drawing a will shall be complied with without interruption in the presence of two witnesses and the Special Notary shall state faithfully the manner in which the formalities were complied with.

CHAPTER XXII

Printed Open Will

334. *Printed open will.*— (1) (a) A testator who knows to read, may opt to present to the Special Notary a computer generated printout of the operative part of his will on a standard paper of the size 29.7 cms x 21 cms entitled 'open will' and declare before the Special Notary that the printout contains his last wish in the presence of two credit worthy witnesses, who shall identify the testator, and certify that the testator is in his perfect senses and free from coercion.

(b) The will shall be printed in double line spacing on one side of the paper only leaving a margin of 5 cm. on left side, 3 cms on top and the bottom and one cm on the right side of the paper. The print shall be continuous without break between words and numbers shall be written in words

(c) After the title, the testator shall set out his full name, occupation, marital status and description which shall contain the names of both the parents, his age and place of residence.

(d) All the open wills brought before the Notary, until they are preserved in a form of a bound book, as provided in sub-section (7), shall be maintained in a provisional file. In the same file, all the wills so presented shall be kept as per the serial order of its presentation and their pages numbered serially.

2. In the presence of the said witnesses, the Special Notary shall verify from the testator whether the will presented by him expresses his last wish according to his intention and whether the testator is in his perfect senses and free from coercion.. The Special Notary shall, thereupon, record on the will the continuous numbers of the pages which it bears in the file maintained for preserving open wills. Every page shall be signed by the testator, and the two witnesses to the will just above the first line and below the last line in the presence of the Special Notary. The Special Notary shall then make a record thereof immediately next to the signatures on the last page of the will and it shall continue without interruption on the same page and on the subsequent pages.

3. The record to be made by the Special Notary in the presence of the testator and the witnesses shall the contain the following:—

(a) That the will was presented by the testator in person and that the testator declared that it was his last wish;

(b) That all the pages of the will were signed by the testator and the witnesses in his presence;

(c) State the number of pages the will contains;

(d) Make mention to any blot, interlineations, correction or marginal note in the will;

(e) That the testator was identified by witnesses;

(f) That the testator was in his perfect senses and wholly free from coercion;

(g) the number which the pages will bear in the file containing open will;

4. The Special Notary shall read aloud in the presence of the witnesses the will presented by the testator and the record made, and after specifying the place, date month and year the record shall be signed by the testator, the witnesses and the Special Notary.

5. The Special Notary shall then affix a passport size photograph of the testator, supplied by the testator, just below the record made by the Special Notary and he shall also sign across the photograph and certify that the photograph is of the testator immediately after all the formalities are completed the Special Notary shall issue a certified photostat copy of the will with the record made by him, to the testator and then shall file the will in the file maintained for the purpose.

6. The Special Notary shall enter the particulars as provided in sub-section (2) above and of the date of the open will in a book maintained for the purpose.

7. At the end of every 200 sheets, the District Judge of the concerned district shall initial all the pages of the wills contained in the file and ensure that the sheets are bound in a book.

8. The Special Notary shall reject the printed open will presented by the testator if the said will is not written in the language of the court or in a language commonly known in the district or is written in a language not known to the Special Notary. In this event, the testator may request the Special Notary to draw a public will.

CHAPTER XXIII

Closed Will

335. *Presentation of closed will and approval by the Special Notary.*— (1) The testator shall present

the closed will to a Special Notary in the presence of two witnesses and declare that the disposition is his last will.

(2) Thereafter, in the presence of the said witnesses, the Special Notary, after having a look at the will but without reading it, shall draw a record of approval. The record shall be drawn immediately next after the signature on the will and shall be continued without interruption on the same page and on the subsequent pages.

(3) The Special Notary shall draw a record stating as follows:—

(a) whether the will is written and signed by the testator;

(b) whether it is initialled by the person who has signed it;

(c) the number of the pages of the will;

(d) whether it has or does not have any blot, interlineations, corrections or marginal notes;

(e) whether the testator was identified;

(f) whether the testator was in his perfect senses and wholly free from any coercion;

(g) whether the will was presented by the testator in person in the manner required by law.

(4) The record of approval shall be read, dated and signed in conformity with the provisions of the preceding sections 325 and 326.

(5) Thereafter and in the presence of the same witnesses the Special Notary shall put the will in a cover and seal it and draw up on the external side of the cover, a note giving the name of the testator whose will is sealed.

336. *Record of the approval of the closed will.*— The record of approval of closed wills shall be made in the respective book. It shall contain the details of the place, the day, month and year, when the record of approval was made and the names and addresses of the testator and the witnesses.

337. *Failure to comply with formalities.*— (1) A closed will in respect whereof the above mentioned formalities have not been complied with shall not take effect and the Special Notary shall be liable to pay damages and be subject to major penalty by disciplinary proceeding.

(2) Failure to record the number of pages of the will and whether it has any blot, interlineations,

correction or marginal note shall invalidate the will, provided that it has in fact been initialed and it does not have any blot, interlineations, correction or marginal note.

338. *Delivery of the closed will.*— Once the will is approved and closed it shall be delivered to the testator and the Special Notary shall enter in his book a note recording the place where, and the day, month and year when, the will was approved and delivered.

339. *Custody of the closed will and its deposit with the Special Notary.*— (1) The testator may keep the closed will with himself or hand it over to a person of his confidence or deposit it in safe custody of the Special Notary.

(2) The testator who wishes to deposit his will in any Special Notary's office, shall hand it over to the Special Notary and the Special Notary shall make a record of deposit or cause such record to be drawn. The record shall be signed by him and the testator, in the respective book.

(3) On receiving such cover, the Special Notary, if satisfied that the person presenting the same for deposit is the testator or his agent, shall record in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

(4) The Special Notary shall then place and retain the sealed cover in his fire proof box.

340. *Who may deposit the will.*— The will may be presented and deposited through any attorney, in which case the power of attorney shall be annexed to the will.

341. *Special power of attorney for return of the will.*— Such special power of attorney shall be drawn by any Special Notary and signed by two witnesses in the concerned book.

CHAPTER XXIV

Opening of the Closed Will

342. *Formalities to open a closed will.*— (1) The closed will shall be opened or made known in the following manner.

(2) After the death of the testator has been verified or where an absent person has left a will, if the closed will is in the possession of a private person, or it is found amidst the effects of the deceased, it shall be taken to a Special Notary who, in presence of the presenter and of two witnesses, shall cause a record to be drawn of the opening of the will. The record shall state in what condition the will was when it was presented and whether it is or it is not in the condition described in the record which was drawn when the will was closed.

343. *Proceedings on death of the depositor.*— (1) If, on the death of the testator who has deposited a sealed cover under section 339, an application be made to the Special Notary who holds it in deposit to open the same, and if the Special Notary is satisfied that the testator is dead, he shall in the applicant's presence and of two witnesses, open the cover, and at the applicant's expense cause the contents thereof to be copied into his Book No. VI.

(2) When such copy has been made the Special Notary shall re-deposit the original will.

344. *Book of record.*— The record mentioned in the preceding section shall be written in a book, the pages whereof shall be numbered, initialed and at the end signed by the District Special Notary.

CHAPTER XXV

Registration of the Closed Will after Opening

345. *Registration of will.*— (1) Once the record of the opening of the will is recorded in the book, the Special Notary shall cause the will to be registered by copying in extenso in an appropriate book making on the original a note, signed by the same Special Notary, stating how it was opened and registered and whether any thing suspicious was noticed or not.

(2) After the will is opened, all its pages shall be initialed by its presenter or by the interested parties present, by witnesses and by the Special Notary.

(3) The original of the will shall, thereafter, be kept in the office of the Special Notary in safe custody in charge of the Special Notary who shall be responsible for it.

346. *Withdrawal of sealed cover deposited under the preceding section.*— If the testator who has

deposited the sealed cover under the preceeding section wishes to withdraw it, he may apply either personally or by duly authorized agent, to the Special Notary who holds it in deposit and such Special Notary, if satisfied that the application is actually the testator or his agent, shall deliver the cover accordingly. The will shall be returned to the testator by following the formalities laid down for the deposit of the will. A record shall be made in Book No. VII.

CHAPTER XXVI

Instrument of Declaration of Heirship

347. *Declaration of heirship.*— (1) After the succession opens, and the law does not require that mandatory inventory proceedings be instituted to partition the inheritance, heirship may be proved by a deed of declaration of heirship drawn by the Special Notary.

(2) Three persons and at least one of the interested parties shall have to declare on oath before the Special Notary that the interested party or parties named by them are the only heir or heirs of the deceased. If such deceased person was married, the name of the spouse shall also be disclosed and whether the spouse is surviving or has expired. The interested party shall also declare in the act whether the value of the inheritance exceeds Rs. 10 lakhs or not shall disclose the names of the spouses of the heirs, if any.

(3) The declarants shall produce the following documents:-

(a) death certificate of the deceased;

(b) will or gift deed mortis causa, when the succession is founded on such document;

(c) document to prove the relationship of the heir or heirs to the deceased;

(4) Where a party is unable to produce a birth certificate, death certificate or a marriage certificate issued by the authorities, the party may produce an order or decree of the court certifying such birth, death or marriage or a certified copy issued by an institution maintaining such records.

(5) When all the interested parties are abroad, a constituted attorney with special powers may make the declaration required under sub-section (2).

(6) A person, who under the provisions of this chapter is not competent to be a witness and a

person who is a successor of the presumed heir, shall not be competent to be a declarant.

(7) If the declarants or the interested party or parties or their attorneys, are found to have knowingly made a false declaration, with regard to the particulars required under sub-section (2), they shall be liable for penal action under Section 191 and 199 of the Indian Penal Code, 1860(45 of 1816).

(8) The fact that any person has been brought on record in Court proceedings other than inventory proceedings as legal representative of the deceased shall not amount to a declaration of heirship.

(9) A deed of declaration of heirship shall be sufficient evidence for the purpose of:-

(i) mutation;

(ii) transfer of shares;

(iii) withdrawal of money from a bank or other financial institution where the deposit does not exceed Rs. 50,000/-. Provided that where there is only one heir there is no restriction on withdrawal of any amount from the deposit.

(10) The fee or duty on a deed of declaration of heirship shall be as preccibed, on each inheritance opened, irrespective of the number of heirs.

(11) The Special Notary recording the deed of declaration of heirship shall, at the expense of the interested party or parties, publish within 15 days, an extract of the declaration disclosing the name and permanent residence of the deceased and the names of the interested parties and other identification particulars, in the Government Gazette. When the value of inheritance exceeds Rs. 10 Lakhs in all, such extract shall also be published in a newspaper in circulation in the locality where the deed is drawn. The Special Notary shall require the interested party or parties to advance the expenses towards the publication of the notice.

(12) Any person claming to be an heir of the deceased who has not been named in the declaration may file a suit for declaration of heirship and consequential reliefs. If such suit is filed, notice thereof shall forthwith be given by the Court to the respective Special Notary or by the Plaintiff in the suit, enclosing a certified copy of the plaint.

(13) If the Special Notary has not received any notice from the Court or the Plaintiff, he shall, within 30 days of the publication of the extract,

issue a certified copy of declaration of heirship, which shall contain an endorsement that no such communication of institution of any suit has been received by him.

(14) Failure to file suit under sub-section (12), shall not deprive the aggrieved party to challenge the deed of declaration within the period of limitation.

CHAPTER XXVII

Void Notarial Acts

348. *Notarial acts when void.*— (1) Notarial acts shall be void in the event of —

(i) incompetence of the Special Notary as regards the subject and place;

(ii) Failure to mention the hour, date, month, year and place, however when it is possible to ascertain which is the correct date, month, year and place from the context of the documents or other material available in the office of the Special Notary, the nullity on the ground of failure to mention them shall not subsist;

(iii) Absence of signature of the parties when they know to or can sign;

(iv) absence of signatures of two witnesses at least when the law does not require more;

(v) failure to identify the party;

(vi) failure to mention the power of attorney, if the act is done by the attorney;

(vii) absence of errata memo of the corrections, interlineations, dashes or erasures made.

However words corrected, struck through or erased without errata memo which do not amount to alteration of the essential terms of the respective instrument or its context in substance, are deemed not written and do not result in nullity, provided that the intention of the testator can be gathered from the remaining part of the will. The same procedure shall be followed as regards words inserted without being initialed, notwithstanding that they may result in alteration of the meaning of the text.

(viii) absence of the signature of the Special Notary.

(2) Where a disposition is made in favour of the witnesses, certifiers or interpreters who have

intervened in public wills or in the record of approval of sealed wills, only such disposition shall be void.

(3) Any act performed by the Special Notary contrary to section 318 shall be void. However, public wills and records of approval of closed wills shall be excluded therefrom; in such cases, of nullity shall be restricted to dispositions made in favour of persons referred to in section 318.

CHAPTER XXVIII

VALIDATION OF NOTARIAL ACTS

349. *Validation of Notarial acts.*— Notarial acts which are null on the grounds mentioned in Clauses (iii), (iv) and (vi) of sub-section (1) of section 348 and which have not been initialed by the parties, may be validated by the competent Court in a suit instituted for the said purpose by an interested party against the other interested parties and the Special Notary, on the following terms:—

(a) when in the circumstances mentioned in Clause (iii) of sub-section (1) of section 348, it is proved that respectable persons are required by law were present;

(b) when in the circumstances mentioned in Clause (iv) of sub section (1) of section 348 the identity of the party to the instrument is proved;

(c) When in the circumstances mentioned in Clause (vii) of sub-section (1) of section 348, it is proved that the deed was written in his hand by the Special Notary or by the Joint Special Notary in terms of section 325 and 326 and a certified true copy, signed by the Special Notary or by the Joint Special Notary is issued.

Provided that:

(i) Public wills or record of approval of closed wills where a mention as to the formal requirement set out in the body of this section is made, may be validated when in the respective suit it is proved that the above requirements had been complied with;

(ii) The decree validating the documents shall be endorsed in the respective deed on application of the parties or by the Special Notary suo motu;

(iii) Notwithstanding such validation, the Special Notary shall be liable for the losses caused and shall also be liable to disciplinary

proceedings and the damages which he is liable to pay may be determined in the above mentioned suit.

CHAPTER XXIX

CIVIL LIABILITY OF THE SPECIAL NOTARY

350. *Liability to pay damages.*— (1) A Special Notary is liable to pay damages:—

(i) when he loses or destroys any books, registers or documents of his office or willfully allows them to be lost or destroyed;

(ii) when he refuses to perform his functions at the right time without just cause;

(iii) where his act is declared false and he is responsible for the falsification;

(iv) when he issues certified copy which is not as per the originals;

(v) when his act is declared void by a Court on the ground of lack of jurisdiction of the Special Notary,

(vi) when his act is declared void by a Court on the account of incapacity of the parties or their attorneys or representatives, and if he had knowledge of their incapacity at the time the act was performed;

(vii) when his act is declared void by a Court for lack of competence of the witnesses and he had knowledge of such fact at the time the act was done;

(viii) when his act is declared void for non-compliance with formal requirement, on grounds other than the lack of competence of witnesses;

(ix) when his act is declared void on account of coercion, and if he had knowledge of the coercion at the time the act was performed or he was a party to the coercion;

(x) when his act is declared void on the ground that he has intentionally induced a party into a mistake.

(2) A Special Notary shall be liable to pay damages for any act done in the discharge of his duties in cases not covered in sub-section (1), when the liability arises from a criminal proceedings.

(3) A Special Notaries shall not be liable to pay damages to the persons who have been

intentionally privy to the act or omission or who at the time the deed was drawn had knowledge of the act or omission and the legal consequences, and did not prevent it, when they could have done so, nor to the heirs or representatives of these persons.

351. *Insufficiency of stamp.*— No document or instrument including a will drawn by a Special Notary shall be invalidated on the ground that it is not duly stamped or that it is insufficiently stamped.

352. *Discretion to state the provision and accept a draft.*— (1) It is open to the Special Notary while drawing an act, to make mention of the legal provision under which the act is done if the parties plead that such mention would better clarify their intention.

(2) It is open to the parties to submit to the Special Notary the proposed draft of the deed which they want the Notary to draw. The notary shall draw the act in the manner shown in the proposed draft if he is satisfied that it conveys better the intention of the parties. The said draft, after being initialed by the Notary, shall be returned to the party who gave it, unless the party desires that the same may be kept on record. Whenever such draft is kept on record, it shall be initialed by all parties who know and can initial it.

CHAPTER XXX CERTIFIED COPIES

353. *Who may apply.*— Any person may apply for certified copies of the wills, entries in the registers, instruments and documents recorded in the office of the Special Notary. However, during the lifetime of the testator, certified copies of public wills, deeds of revocation of wills, records of deposit of closed wills, records of approval of closed wills, record of open printed wills shall be issued only on the application of the testator himself or by his attorney with special powers. After the death of the testator, such certified copies shall be issued to any person upon production of the death certificate of the testator and an endorsement to that effect shall be made in the margin of the page where the records or will are written, unless such endorsement has already been made.

354. *To whom certified copy may be delivered.*— A certified copy obtained under the section 353 shall be delivered to the applicant, either in person or to his duly authorized agent.

355. *Time limit to issue certified copies.*— The Special Notary shall issue the certified copies, within a period of ten days, on payment of the prescribed fees. When an urgent certified copy is applied for, it shall be issued upon payment of such extra fees as may be prescribed, within two days.

356. *When a reference is made to other documents in the main instrument.*— When in any instruments drawn up by the Special Notary, a mention is made to a power of attorney or to a deed delegating powers or to any other document which is on record, certified copy of such document shall be issued along with the certified copy of the main instrument drawn up by the Special Notary.

357. *When a reference is made to a drawing or plan in the main instrument.*— A certified copy of a deed or instrument, in which a reference is made to a drawing or a plan which is on record, shall be accompanied by a certified copy of such drawing or plan. For this purpose, the Special Notary shall appoint an expert to prepare a copy thereof and the Special Notary shall issue the certified copy only after comparing it with the original. The fees payable to the expert shall be borne by the party applying for the certified copy, and such fees shall be fixed by the Special Notary.

358. *Manner in which certified copy is to be issued.*— (1) No certified copy shall be issued by the Special Notary leaving any blanks or containing any abbreviations or figures and all pages shall be numbered serially.

(2) The date on which and the place at which the certified copy is issued shall be recorded therein.

359. *When there are interlineations, erasures and corrections.*— Where there are any interlineations, erasures, corrections made or any line drawn in the body of the instrument, a footnote shall be recorded describing them immediately following the body of the main text.

CHAPTER XXXI FEES

360. *Fees be fixed by the State Government.*— The State Government shall prepare a table of fees payable for the instruments drawn by the Special Notary.

361. *Publication of fees.*— A table of fees so payable shall be published in the official Gazette and a copy thereof shall be exposed to public view in every office of Special Notaries.

CHAPTER XXXII

PENALTIES

362. *Penalty for incorrectly recording, endorsing, copying, and translating documents with intent to injure.*— Every special notary appointed under this Act and every person employed in his office for the purposes of this Act, who being charged with drawing, endorsing, copying, or translating a document, does so in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury as defined in the Indian Penal Code, 1860 (45 of 1860) to any person, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Every special notary appointed under this Act and every person employed in his office for the purposes of this Act, who has access to the documents, books and registers maintained in his office, remove, mutilate, destroys or make any alteration thereto intending thereby to cause or knowing it to be likely that he may thereby cause injury as defined in the Indian Penal Code 1860 (45 of 1860) to any person shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

363. *Penalties for making false statements, delivering false copies or translations, false personation and abetment.*— Whoever-

(a) intentionally makes any false statement, whether on oath, or not, whether it has been recorded or not, before any officer acting under this Act;

(b) intentionally delivers to any officer acting under this Act a false copy or translation of a document or a false copy of a map or plan;

(c) personates another before any officer acting under this Act;

(d) abets anything made punishable under this Act;

(e) shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

364. *Thing bona fide done or refused in his official capacity by an officer acting under this Act.*— No officer acting under this Act shall be liable to any suit or claim or demand by reason of anything in good faith done or refused in his official capacity.

365. *Nothing so done is invalidated by defect in appointment or procedure of appointment of an officer acting under this Act.*— Nothing done in good faith pursuant to this Act by an officer under this Act shall be deemed invalid merely by reason of any defect in his appointment or in the procedure of his appointment.

CHAPTER XXXIII

MISCELLANEOUS

366. *Ex-officio powers and acts to be done after office hours.*— (1) The District Registrars and Sub-Registrars appointed under the Registration Act 1908 (16 of 1908) shall ex-officio exercise the powers and functions of District Special Notaries and Special Notaries under this Act.

(2) The State Registrar appointed in the Registration Department of the State Government shall be the ex officio State Special Notary and shall have power of general superintendence and control over the Special Notaries and District Special Notaries unless the State Government deems it necessary to appoint a State Special Notary exclusively for performing functions as stated as above.

(3) No Special Notary shall be bound to draw any instrument beyond the normal office hours or on Sundays or on holidays, unless there is an emergency. The Special Notary shall, where he is required to work beyond the normal office hours, be paid by the person requiring such work, such over time fees as may be fixed by the Government, by notification. The Special Notary shall also be entitled to adequate police protection for his personal security and the security of the Notarial books.

PART IV

INVENTORY PROCEEDING

CHAPTER XXXIV

TYPES OF INVENTORY PROCEEDING

367. *Mandatory Inventory.* — When a person dies leaving a surviving spouse or an heir, any one

of whom is an interdict, absent person, unknown, or minor, inheritance shall be partitioned, by instituting inventory proceeding only, which shall be called mandatory Inventory proceeding.

368. *Optional Inventory.*— Where the interested parties do not fall in any of the categories mentioned in section 367, the parties may institute inventory proceeding to partition the inheritance, which shall be called as optional inventory proceeding.

369. *Inventory upon divorce, or separation or annulment of marriage.*— (1) After the divorce or separation of persons or annulment of marriage is decreed, the spouses may partition their assets by instituting inventory proceeding which shall be miscellaneous proceeding appended to the suit for divorce, separation of persons or annulment.

(2) Separation of assets in special cases – debts of spouse, insolvency and bankruptcy;

(a) Wherever any spouse seeks separation of common assets or where either spouse is declared as insolvent or bankrupt, the procedure specified in sub-section (1) shall be followed with the following modification:—

(i) the creditor of the indebted spouse or any creditor in case of insolvency or bankruptcy shall have the right to prosecute the inventory;

(ii) debts which are not proved by documentary evidence shall not be approved;

(iii) the other spouse has the right to choose the assets which shall constitute his or her moiety. If such right is exercised, notice thereof shall be given to the creditors who may object to the choice giving the grounds on which such objections are based.

(b) Where the Court upholds the objection, of the creditors, the Court shall order that a second valuation of such assets as have not been properly valued be done by three valuers appointed by the aggrieved spouse, the creditor and the Court.

(c) When the second valuation modifies the value of the assets chosen by the aggrieved spouse, he/she may within 10 days from the conclusion of the appraisal, withdraw from the choice exercised. Thereupon, the moieties shall be allotted by draw of lots.

370. *Inventory where a party dies after allotment in Inventory proceeding which were finally disposed of.*— Where, after the partition is effected in any inventory, any interested party dies leaving no assets other than those that have been allotted in the inventory, such inheritance shall be partitioned in the same inventory proceeding that was finally disposed. The person to whom the office of head of family belongs shall take oath of office and the procedure set out hereafter shall be applicable.

371. *Inventory upon death of the surviving spouse.*— (1) Where the inventory of a predeceased spouse is concluded, the inventory on the death of the surviving spouse shall be continued in the former inventory proceeding.

(2) In the event there are additional assets in the proceeding referred to in sub-section (1), their serial number shall be in continuation of the last item in the former inventory proceeding.

(3) Where, after allotment or after the death of the surviving spouse, inventory proceeding is instituted, the assets which have been already valued in the prior inventory need not be valued again in the subsequent inventory unless there are strong grounds to believe that their value has changed. In the event of change of value of currency, such change shall be taken into consideration. In addition to the valuation already made, due description of assets previously made shall be retained. If separate inventory is filed, the description shall be reproduced in the separate inventory.

372. *Additional partition.*— (1) Where, after the conclusion of an inventory, it is found that some assets are left out, such omission per se is not a ground to set aside the partition. An additional partition shall be effected of the assets left out in the same proceeding if the parties do not opt for partition by deed. In no other case, the inheritance shall be partitioned piecemeal.

(2) Where, at the time of the inventory on the death of the surviving spouse, it is found that some assets were left out in the inventory of the pre deceased spouse, such assets shall be described and partitioned in the inventory of the surviving spouse.

373. *Inventory in the event of dissolution of joint family.*— (1) When a joint family as governed by

decree dated 16-12-1880 is dissolved, the estate may be partitioned by instituting inventory proceeding and the procedure hereafter provided shall be applicable.

(2) The member of the joint family who was in the charge of management of its assets shall be the head of the family.

(3) The general rules that regulate partition among co-heirs shall be applicable to partitions among the members of the family.

CHAPTER XXXV

JURISDICTION

374. *Jurisdiction.*— (1) The Court having jurisdiction over the place where the succession opens is competent to entertain inventory proceeding for—

(a) partition;

(b) declaration of a person as heir or representative of the deceased.

(2) The place of the opening of the succession shall be determined as follows :—

(i) If the deceased had a permanent residence in the State of Goa, the succession opens at the place of his permanent residence;

(ii) If the deceased did not have a permanent residence in Goa, the succession opens where his immovable properties are situated in Goa. If his immovable properties are situated at different places in Goa, the succession opens where the major part of these properties are situated. Such major part is calculated on the basis of the value of the properties.

(iii) If the immovable properties of the deceased who was governed by this Act are situated partly in Goa and partly outside Goa, the succession opens in Goa irrespective of the value of the properties;

(iv) The succession of a person, who died outside the State of Goa, and he did not have a permanent residence in Goa, nor did he own any immovable properties in Goa but has movables in Goa, opens at the place where major part of the movable assets are located;

(v) If the deceased did not have a permanent residence nor immovable properties in Goa, the succession opens at the place where he died in the State of Goa.

3. The rule that the Court competent to entertain the inventory proceeding is the Court where the inheritance opens is subject to the exceptions that the court in which the inventory was instituted upon the death of one of the spouses shall have jurisdiction to entertain the petition for inventory which may have to be initiated upon the death of the surviving spouse, unless the marriage is contracted under the regime of absolute separation of assets.

375. *Consolidation of inventories.*— (1) It shall be lawful to consolidate inventories in order to partition assets comprised in different inheritances:—

(a) when the persons among whom the properties are to be partitioned are the same;

(b) When the inheritances left by both the spouses are to be partitioned.

(2) Where the partition is dependent upon one or more other partitions:—

(i) If the dependence is total because in one of the partitions there are no assets other than those, which are to be allotted to the deceased in the other, the application for consolidation shall not be refused.

(ii) If the dependence is partial because there are other assets, the application for consolidation shall be decided, taking into consideration the interests of the parties and the smooth course of the proceeding;

(3) Lack of pecuniary or territorial jurisdiction to entertain one of the inventories shall not be a bar to the grant of an application for consolidation even if, in one of the inventories, there are heirs under disability.

CHAPTER XXXVI

HEAD OF THE FAMILY

376. *Petition.*— (1) Inventory proceeding shall be instituted by presenting a petition. Such petition may be presented by the interested party in person or through a duly constituted attorney. Any party or, where a party is subject to orphan's jurisdiction, the personal representative of the person under disability shall present the petition accompanied by the death certificate of the estate leaver.

(2) Where the death of the estate leaver has not been registered, other admissible evidence may be adduced.

(3) The words “interested party” mean heir, moiety holder of the deceased, the executor in a will where there are minor, interdicted or absent heirs or legatees and the persons who have the right to usufruct of a part of the inheritance without specifying its value or the thing, and also the executor.

(4) The petition shall set out the name, address, locus standi of the petitioner, the name of the estate leaver, facts determining the jurisdiction of the Court, value of the inheritance, identification of the person who will discharge the functions of the head of the family and whether there are heirs subject to orphan’s jurisdiction.

377. Order of appointment of head of the family.— (1) When the petition is duly filed, the Court may hold an inquiry to decide who shall hold the office of head of the family and shall upon considering the petition and documents accompanying it, appoint a person as the head of family and notify him to take oath that he shall discharge his duties diligently and faithfully and make a declaration stating:-

i) The name and status of the estate leaver, date on which and the place where he died;

ii) The name, status, age and capacity of the heirs, testamentary or legal, without excluding those who are known to have been conceived and the degree of kinship of the legal heirs;

iii) Whether the estate leaver has left a will or a gift and, if so, the head of the family shall produce the original or a certified copy of the will or of the gift deed;

iv) Whether the estate leaver was married and, whether there was an ante-nuptial agreement and if so, he shall produce a certified copy of the agreement;

v) Where a party is subject to orphan’s jurisdiction, the names of persons who shall constitute the family council. The Court may accept or reject the proposed names;

vi) whether there are assets to be collated and give the names of the conferees. The head of the family shall also give the names and addresses of the legatees and of the creditors;

vii) what are the assets of inheritance.

(2) At the time of the head of the family makes the declaration, he shall produce the certified copy of the renunciation deed if any and such other document as may be relevant to the case.

(3) where the head of the family makes a reference to any document in his declaration, he shall, whenever possible, give particulars in respect of date of the original document, place where drawn or registered and the number of registration with book number and page.

(4) The declaration of the head of the family may be made by affidavit, copies of which shall be supplied to all the interested parties and may be accompanied by a list of assets and by documents.

378. Inquiry for appointment of head of the family.— Where the Court is satisfied upon a perusal of the declaration the person appointed as head of the family that the office belongs to another person, the Court shall, upon inquiry, if necessary, appoint such other person as the head of the family.

379. Evidentiary value of the declaration of the head of the family.— (1) The declarations of the head of the family, given both initially and subsequently, are presumed to be true until the contrary is proved, unless they are made in his own interest or they are in respect of facts which are required by the law to be proved in a particular manner or which require the agreement of all or of the majority of the parties.

2) The function of the head of the family shall not be performed through a constituted attorney unless there is no other interested party available in the country for such appointment or if all the parties or their representatives consent to such appointment.

3) Where the functions of head of the family are performed by a constituted attorney, such functions, including statement made, shall bind the principal and he shall be held liable for all legal consequences as if such acts of commission or omission were performed by him.

380. Rights and Duties of the Head of the family.— (a) The head of the family, as manager of the estate, shall receive all income and profits of the assets in his possession and shall meet the normal liabilities of the inheritance and shall every year render accounts to the Court, in the miscellaneous proceeding, in case the usufruct of the assets does not belong to him....

The head of the family is bound to render accounts from the date he takes charge of the assets of the inheritance and to deposit the balance

amount in a nationalized bank, after the amount required to meet the expensed for management of the assets is deducted. Any sum handed over to the heirs under section 253 shall be included in the expenses.

(b) The head of the family shall not alienate any of the assets of the inheritance except fruits and other perishable articles. However, the head of the family may create a lease of a temporary nature which shall come to an end upon the conclusion of the inventory proceeding.

(c) The head of the family shall be bound to defend and protect the estate.

(d) The head of the family shall take such legal steps as may be necessary to recover debts payable to the inheritance when they are likely to become time barred, and in case the head of the family files a suit for recovery of a debt, any of the co-heirs may apply to the Court that he be made a party to the proceeding.

(e) The creditors of the inheritance may sue the head of the family to secure a preventive relief. But in a matter relating to title to the properties or to recovery of debts, he shall not be so sued without impleading all the co-heirs.

(f) The head of the family is entitled to be reimbursed for the expenses incurred by him on account of the estate, with interest thereon; but he shall not be liable to pay interest in respect of the amount received by him on account of the estate, except from the time he is in default.

381. *Concealment of assets by head of the family.*— Assets are deemed to be concealed when the head of the family fraudulently does not include an asset of the inheritance in the list of assets or denies that such asset is part of the inheritance and a complaint is made to the Court in this regard.

382. *Consequences of concealment.*— (a) Where the head of the family has concealed assets, he shall forfeit any right he may have to the assets concealed in favour of the other heirs.

(b) Where the head of the family has concealed the title deeds necessary to know the nature or the charges of the assets, he shall be liable for damages resulting from such concealment.

383. *Consequence of giving a list of assets based on false documents.*— Where the head of the family has included in the list of assets and liabilities, credits, rights or charges based on sham, false or forged documents, he shall be liable for the damage caused.

384. *Duration of office of head of the family.*— The head of the family shall continue to manage the estate till the order of homologation becomes final.

385. *Removal of the head of the family.*— (1) The head of family may be removed when he-

(i) delays in filing the list of assets and liabilities;

(ii) fails to indicate to the valuers the assets which are to be evaluated;

(iii) does not appear in Court, when required;

(iv) does not produce the required documents;

(v) does not give declarations or statements which are required from him; or

(vi) does not manage the assets with zeal and prudence.

(vii) in any other manner fails to discharge the duties of the office.

(2) Any party or, in case the inventory is of orphan's jurisdiction, the personal representative, may apply for the removal of the head of family. The Court shall then hold a summary inquiry with a short notice to the head of the family wherein not more than 3 witnesses shall be examined by either side.

(3) When the head of family is removed, another shall be appointed in accordance with this Act and the provisions of section 377 shall be thereafter complied with.

(4) Where the cause for the removal of the head of the family is his failure to do an act for which he was duly notified, the head of the family shall be liable to be punished for disobedience of order of the Court as provided in Order XXXIX Rule 2-A of the First Schedule to the Code of Civil Procedure 1908 (5 of 1908).

(5) Where the removal takes place after the family auction (licitation), the successful bidders may apply that the respective assets be delivered to them. The successful bidder shall be considered

to be the head of the family in respect of the assets, which are delivered to him.

(6) The above provisions shall be applicable to the person who has the duty to collate, and fails to discharge his duties of special head of the family in respect of the assets which he has to collate.

386. *Discharge of the head of the family from holding office.*— (1) The head of the family may apply that he may be discharged from holding the office :—

- a) When he is seventy years of age or above;
- b) When he is unable to perform his functions properly on the grounds of ill health;
- c) When he resides outside the jurisdiction of the Court.
- d) When the functions as Head of family are incompatible with the functions of the public post he is holding.

2) The application for discharge shall be decided upon a summary inquiry.

CHAPTER XXXVII

HEARINGS

387. *Hearings in the inventory proceeding.*— (1) All hearings in the inventory proceeding shall be in open Court and a record (roznama) of every hearing shall be maintained. Whenever the Court prepares a chart of partition, preliminary chart of partition or other document, the same shall be prepared expeditiously and a copy thereof shall be supplied to the parties or their Advocates, on the next date of hearing.

(2) Copies of the list of assets and of all applications, written replies and objections filed by a party, shall be supplied by such party to the other interested parties present for the hearing, and their acknowledgment of receipt be obtained.

388. *Prosecution of inventory.*—(1) Where the Court is satisfied upon perusal of the declaration of the head of the family that there is no ground for the inventory to proceed, the court shall drop the proceeding after hearing the head of the family.

(2) Where the Court is satisfied that the inventory is maintainable, it shall fix a date for the submission of the list of assets and for production of such documents, which the head of the family was

unable to produce earlier notice of which shall be given to the head of the family.

(3) The Court shall order that first summon or original process be served on the moiety holder of the estate leaver, on the heirs, on their spouses, unless they are married under the regime of absolute separation of assets, on the legatees and the creditors. Summon is not required to be served on the head of the family, notwithstanding that he is an heir or representative of an heir.

(4) Notice shall be issued to the donee, whether he is bound to collate or not, to appear on the date fixed for taking oath that he will discharge his duties as special head of the family in respect of the assets which have been gifted to him.

(5) Failure to serve the first summon on the heirs, or on their spouses or the moiety holder shall render all proceeding subsequent to the initial petition null and void. The application for annulling the proceeding may be filed in the inventory court at any stage of the nullity is discovered.

(6) Where a mandatory inventory has been instituted on the ground that a party is absent, if the Court is satisfied, upon perusal of the declaration of the head of the family and after hearing the applicant or on the basis of official information, that the party is at a specific place within the country, or in a foreign country, such proceeding shall be dropped.

(7) Where the head of the family declares or record discloses, that there are unknown legatees and creditors, they shall be served by substituted service by affixing the summon in some conspicuous place in the Court house.

(8) The first summon shall bring to the notice of the parties the next date of hearing, on or before which, they may file objections, if any, and such summon shall be accompanied by a copy of the declaration of head of the family of list of assets, if any, submitted by the head of the family.

(9) When any of the interested parties is under disability, the Court shall appoint a personal representative for him before ordering the issuance of first summon.

389. *Proceeding in absentia.*— The inventory shall proceed in the absence of the parties who, after having received the first summon or notice

of the proceeding, do not attend the Court personally or through their advocates and said parties shall not be entitled to any further notice of any stage of the proceeding. However, such parties, who reside within the jurisdiction of the Court, shall be given notice of the licitation and homologation at the registered address. Unless after the service of summon a party files a memo of his registered address within the jurisdiction of the Court, which is different from the address given by the head of the family, the latter shall be deemed to be registered address of the party. Where a party files a registered address, he shall state the house number, street name, ward name, village or city.

390. *Parties under disability.*— (1) A party under disability shall be represented in the inventory by his natural guardian. A guardian ad-litem shall be appointed to represent a party under disability only when his natural guardian representative has an adverse interest.

(2) A curator ad-litem shall also be appointed to represent a party absent at an unknown place, when the said party does not put in appearance or when no curator has been earlier appointed to look after his interest.

(3) When the party under disability can be represented by his parents, no family council shall be appointed and its functions shall be performed by the parents.

(4) Where the inventory proceeding are concluded and it is necessary to make a provision for the management of the assets allotted to a person absent at unknown place, the said assets shall be entrusted to the curator ad-litem who has been already appointed, upon his furnishing security, when deemed necessary. Such curator shall have powers to manage the assets only and has the duty to act as a prudent man and he shall render accounts every year.

(5) Where a personal representative is already appointed by a competent Court under a special law, such personal representative shall be personal representative for the inventory proceeding. Where such personal representative has an adverse interest to such party, The Court shall appoint a guardian ad-litem.

(6) Where the disability arises from insanity, the insanity shall be proved by a certificate issued by

the Director of any Institute of Psychiatry and Human Behaviour, where the party is an internee of such an Institute. In other cases, the insanity shall be proved by certificate issued by two Psychiatrists or by referring the concerned party to the nearest Institute of Psychiatry and Human Behaviour.

391. *Discharge of guardian, etc.*— (1) When the guardian, guardian ad-litem, curator ad-litem, member of the family council, or the administrator wishes to be discharged as such, he shall present an application giving the grounds for seeking discharge and file a list of witnesses and documents on which he relies.

(2) The Court shall, after recording evidence, if necessary and hearing the parties, pass appropriate orders.

392. *Discharge or removal of guardian, etc.*— (1) Any member of the family council, or relative or the guardian up to the sixth degree, may apply on grounds set out in the application that the guardian be discharged or removed from office.

(2) The respective guardian shall be given notice to give his say and upon hearing the parties the Court shall pass appropriate orders.

393. *Composition of the Family Council.*— The family council shall consist of three members, wherever possible, one from the paternal side, second from the maternal side and third one from either side.

The members of the family council shall be chosen from amongst the relatives of the person under disability having regard to the proximity of relationship, friendship, qualities, age, residence and interest shown by them in the person under disability.

The family council may be reconstituted when a relative with better rights applies to the Court that he be included in substitution of another member. All resolutions and actions taken earlier by the previous family council shall be saved.

Where there is a conflict of interest between the person under disability and the natural guardian, spouse or ascendants or descendants, the person under disability shall be represented by a guardian ad litem appointed by the Court.

394. *Death of moiety holder or heir during the pendency of the proceeding.*— (1) Inventory proceeding shall not abate by reason of death of the moiety holder or any heir.

(2) Where the moiety holder or any heir dies before the final disposal of the inventory, the head of the family shall make an application to bring the heirs of the deceased on record and, after a supplementary declaration of the head of the family is recorded, summon shall be served on the persons proposed to be made parties.

(3) Both the persons summoned and the parties notified may dispute the status of the persons as heir sought to be impleaded, on or before the next date of hearing.

(4) If no such dispute is raised, the persons indicated by the head of the family shall be considered as heirs, without prejudice to the provisions of section 396.

(5) Where any creditor or legatee served with summon in the inventory proceeding dies, his heirs may make an application to get themselves impleaded by following the procedure prescribed in section 396.

395. *Challenge to the maintainability of the proceeding and other objections.*— (1) Any of the parties may on the date of hearing but within 30 days from the receipt of the summon,—

(i) challenge the maintainability of the inventory proceeding;

(ii) contend that any of the parties to the inventory is under disability;

(iii) dispute their own locus standi or the locus standi of any other party who has been served with summon, unless they have been served with the summon as creditors;

(iv) challenge the competence of the head of family to hold such office;

(v) apply that the partition should be restricted to certain assets on the ground that the remaining assets have been legally partitioned only.

(2) The application and the objections shall also state what evidence is proposed to be led. The Court shall, after such evidence is led and upon hearing the parties, decide the dispute.

(3) Where the challenge or dispute is raised before the service of summons on all the heirs, no order shall be passed thereon without completion of the said service.

(4) When the competence of the head of the family appointed during the proceeding, is challenged, the provisions of this section shall be applicable.

396. *Application to be declared interested party, legatee or creditor and to be made party to the proceeding.*— (1) Any person may, at any stage of the Inventory proceeding, apply that he may be impleaded as interested party, legatee or creditor. Such application shall be accompanied by documents and a list of witnesses relied upon.

(2) The vendee of a share in an undivided inheritance may at any stage of the inventory proceeding, before the licitation takes place, apply that he may be impleaded as interested party and such application shall be accompanied by documents and a list of witnesses relied upon.

(3) The head of the family and the parties may give their say along with documents and list of witnesses to be relied upon. After recording evidence, if any, and hearing the parties, the Court shall pass appropriate orders, including on the validity of the sale of the share.

397. *Intended sale of a share in an undivided inheritance.*— (1) Where a co-heir or a moiety holder intends to sell his respective share or moiety in an undivided inheritance to strangers institutes inventory proceeding to enable the parties entitled to pre-empt to exercise their right and shall state in the application initiating the proceeding the price and conditions of the proposed sale. Upon such inventory being initiated, the court shall proceed to appoint the head of the family, and, where necessary, appoint guardians, curators or the family council, and thereupon, convene a conference of the interested parties solely for the purpose of exercising the right of pre-emption. The procedure laid down in section 399 shall mutatis mutandi be followed.

398. *Sale of share in the undivided inheritance.*— (1) Where any of the heirs has sold his undivided share in the inheritance to a stranger or the moiety holder has sold his moiety, without notice to the co-heirs, the co-heirs may exercise the right of pre-emption in the inventory proceeding within 60

days from the date of notice of the application by the vendees to be brought on record.

399. *Order of priority and procedure.*— (1) The order of priority to exercise the right of pre-emption shall be as follows:—

- i) All the co-heirs jointly in a conference;
- ii) The moiety holder;
- iii) individual heir.

(2) Where such an application is made by the vendee, the head of the family or any heir may apply to the Court that a conference of all interested parties be convened to resolve whether all the co-heirs jointly wish to exercise their right of pre-emption in favour of the inheritance. Where such right is not exercised, and upon moiety holder also failing to exercise such right, the heirs may exercise their individual rights in accordance with the succeeding sub-section.

(3) (a) Where more than one heir wishes to exercise the right of pre-emption, the largest share holder shall have preference.

(b) If any interested party expressly pre-empts and, then, fails to make the payment or deposit the price within 15 days time, he shall forfeit his right. Such failure shall be brought to the notice of next largest shareholder, who has exercised the right of pre-emption, and he shall have to make the payment or deposit the price, within 15 days from the date of receipt of the notice, and so on.

(c) Where the shares are equal, all those who applied for pre-emption, shall be summoned to appear in Court for licitation. Minutes of the licitation shall be drawn and the highest bid of each bidder shall be recorded. The highest bidder shall make the payment within 15 days from the date of the licitation, failing which he shall forfeit his right. Such failure shall be brought to the notice of the next highest bidder who shall have to make the payment or deposit the price within 15 days from the date of receipt of the notice and so on.

CHAPTER XXXVIII

INITIAL LIST OF ASSETS

400. *Initial list of assets.*— (1) The assets shall be listed by the head of the family item wise starting with debts due to the estates, securities, actionable claims, money, foreign coins, objects of

gold, silver and precious metals and such other objects and thereafter all the remaining movables and livestock, the immovables, including mortgages, easements, leases and other encumbrances thereon and lastly debts due by the estate.

(2) A space of about 5 cms. shall be kept between the items.

(3) Separate lists shall be prepared of the assets, which are to be valued by different persons and by different methods.

(4) Every page of the list shall be initialed and the last page shall be signed by the head of the family or, when he does not know or cannot write, he shall affix his thumb impressions on all pages.

(5) The assets shall be listed by giving all the necessary particulars for their proper identification. Immovable properties shall be identified by their land registration details, description and inscription details of source of title thereto, land revenue (Matriz) number, survey number, their location and area. All the shares and securities of the same type with their respective numbers shall be clubbed together in one item except those which have been issued by different entities.

(6) Movables of the same type for which the same value ought to be given, taking into account their material utility and condition, shall also be included in one item.

(7) Improvements made by the inheritance in properties belonging to a third party shall be described in kind when they can be separated from the properties in which they were made and, if they cannot be so separated, they shall be listed as debts due to the inheritance.

(8) Improvements made by third parties in the property of the inheritance shall be described as debts due by the inheritance, when they cannot be removed by the person who made such improvement.

(9) The Head of the family besides listing the assets referred to in proceeding sub-sections, shall also state their estimated value.

401. *Objections to the list of assets and other objections.*— (1) Within 30 days from the date the

head of the family submits the list of assets, the parties may raise the following objections:—

(a) that all assets have not been listed;

(b) that the head of the family or the donee denies the existence of the assets in his possession;

(c) that the head of the family or the donee denies his duties or obligation to collate;

(d) that the head of the family or the donee disputes that he has received assets which are attributed to have been received by him.

(2) Any party may, at any time after the expiry of 30 days, raise objection that all the assets have not been listed, provided such party satisfies the Court that he acquired knowledge of the existence of the properties only within the last 30 days before the presentation of the objection. But failure to raise such objection shall not deprive the party from seeking additional partition as provided in section 372.

(3) Where an objection has been raised that all assets and liabilities have not been listed, notice of the objection shall be given to the head of the family or the donee and they shall be called upon to list out the assets or liabilities left out or to give their say.

(4) Where the head of the family or donee who has been served with notice of the objections admits the existence of the assets or liabilities and acknowledges that they belong to the inheritance but requires time to list them, he may apply for time for the said purpose.

(5) Where the head of the family or the donee denies the existence of the assets or liabilities or declares that they do not belong to the inheritance, the Court shall hold a summary inquiry as deemed necessary and decide whether the assets or liabilities should be listed.

(6) Where the dispute cannot be decided summarily and it is necessary to hold a detailed inquiry, the parties shall be directed to file a suit, if they so desire, in respect of the disputed asset or liability and the inventory shall proceed in the respect of the remaining assets and liabilities.

(7) Where the head of the family or the donee fails to give his reply on the date fixed therefor, it shall be presumed that he admits the existence of the assets or liabilities and the duty to list them.

(8) (a) Where the head of the family or the conferee denies the existence of the assets in his possession or the duty to describe them or to collate or he dispute as to the assets which have been received by him, the disputes shall be decided summarily by the Court.

(b) The provisions of sub-section(6) shall be applicable to this sub-section.

(c) Where the dispute cannot be decided in the inventory proceeding, the head of the family or the donee shall not receive the assets allotted to him without furnishing security corresponding to the value of the disputed assets.

402. *When co-heirs are called upon to give a list of assets.*— Where the head of the family declares that he is unable to give a list of some of the assets belonging to the inheritance on the ground that the said assets are in possession of some other co-heirs, such co-heirs shall be called upon to list them within such time limit as may be fixed by the Court. Thereafter, the provisions of section 400 shall be followed.

403. *Deletion of assets listed in the preliminary list.*— Where any co-heir or a third party claims ownership of any of the assets listed in the inventory and applies for their removal from the list of assets of the inheritance, the dispute shall be decided, after hearing the head of the family or the person who has listed the assets and after recording of evidence.

404. *Disputes relating to concealment of assets.*— (1) The person who conceals the asset is deemed to be merely in custody of those assets and the Court may order such person to hand over these assets to the head of the family.

(2) The issue whether there is concealment of properties shall be decided in the inventory when the dispute can be decided on perusal of the application and replies of the parties and the documents and other material on record.

(3) Where a detail inquiry is required, the Court shall direct the parties to file a Civil Suit, if they so desire.

CHAPTER XXXIX

LIABILITIES OF THE INHERITANCE

405. *Payment of debts of inheritance.*— The liability for the payment of debts of the estate-leaver is of the inheritance. However, after the partition is effected, the co-heirs are liable to pay the debt in proportion to the share of the inheritance allotted to them.

406. *Funeral expenses.*— The funeral expenses of the estate leaver shall be paid by the inheritance, whether there are forced heirs or not.

407. *Redemption of certain encumbrances in rem.*— (a) Where immovable properties of the inheritance are mortgaged, or are charged with redeemable instalments, any of the co-heirs may, if there are funds available in the inheritance, demands that the said liabilities be satisfied before the partition.

(b) Where immovable assets are listed for partition alongwith the said encumbrances, or any other charges, the assets shall be valued as if there were no encumbrances; thereafter the amount corresponding to the encumbrances shall be deducted and the heir, to whom the immovable property is allotted, shall pay the said encumbrances exclusively.

(c) The co-heir who has paid a common mortgage debt or part thereof in excess of his share, shall by reason of the failure to deduct the encumbrance of mortgage, have only the right to recover from other co-heirs such part thereof as they are liable to pay, in proportion to their shares in the inheritance, even if the co-heir, who had paid it, gets subrogated in the rights of the creditor.

408. *Creditor's claim.*— (a) Any creditor may make an application in the inventory proceeding seeking acknowledgement and payment of the debts due to him by the inheritance which have not been listed by the head of the family.

(b) Such application may be made till the date of the order as to the manner in which the partition is to be carried out is passed, unless the respective creditor had been summoned to take part in the inventory.

(c) Where the respective creditor was so served, he may put up his claim till the date the conference of the parties for approval of debts, is held.

(d) Failure to do so does not debar him from claiming the payment by filing a civil suit. However, in such a case, even if the defendants do not resist the suit, the creditor shall be liable to pay costs, whatever be the outcome of the suit.

409. *Debtor's denial.*— (1) Where any debt due to the inheritance listed by the head of the family is denied by the alleged debtor, the Court shall, upon hearing the head of the family and the debtor, decide if the debt shall be retained in the list or shall be removed from the list.

(2) If the debt is retained in the list of assets, the debt shall be deemed to be litigious; if the said debt is removed from the list the right of the parties to demand its payment by filing a civil suit, is saved.

410. *Valuation.*— (1) Where no objections have been raised as regards the list of assets or the objections raised have been already decided, the Court shall order that the assets be valued as on the date of the opening of the inheritance and shall, for that purpose, appoint a valuer. In the order of appointment of the valuer, the Court shall fix his fees and a date for submission of the valuation report.

(2) The valuation shall be done by a valuer appointed by the Court. The Court may, however, appoint different valuers for the valuation of various types of assets if their special nature so demands.

(3) The valuer shall be served with the order of his appointment and be furnished with the respective list of assets.

(4) The valuer shall give the value of the each asset, as on the date of the opening of the inheritance, records such alteration or addition to the list which, in his opinion, are necessary and give the basis for the value arrived at by him as against each asset in the 5 centimeters space left for the said purpose, in the list.

411. *Valuation by officer of the Court.*— Where there are assets, the value of which can be determined by a mere arithmetical operation, the file shall be referred to an Officer of the Court for such purpose immediately after the lists have been submitted and such officer shall determine the value within 15 days, unless the time limit is extended by the Court.

CHAPTER XL

FINAL LIST, CONFERENCE OF THE PARTIES
AND PAYMENT OF DEBTS

412. *Final list.*— (1) After the valuation is finalized, the Court shall fix a date for submission of final list of assets and liabilities by the officer of the Court in charge of inventory proceeding, indicating their values.

(2) As regards movable of small value, notwithstanding that they are of different nature, lots shall be made so that, as far as possible, in each item, assets of the value of not less than Rs. 500/- are included.

413. *Division by metes and bounds.*— (a) Where the inheritance comprises, among other assets, of divisible immovable properties other than residential houses, any party may, after the final list of assets is made, apply that the said immovable properties be divided by metes and bounds in accordance with the shares and be allotted to the respective interested parties. Two or more interested parties may state that they agree to take a joint sub divided plot. Where divided plots are equal in area, lots shall be drawn for the purposes of allotment.

(b) Where an application for division by metes and bounds is made, the Court shall appoint a commissioner who shall submit a report stating whether the immovable properties are divisible in accordance with the rules and regulations relating to sub division of lands in force. Where the properties are divisible, he shall sub divide them into plots. Where the commissioner submits a report that any immovable property is not divisible, such immovable property shall be put to licitation.

414. *Objection to overvaluation, conference, application for licitation.*— After the final list is prepared, any of the heirs or moiety holders of the deceased may within 15 days—

(a) raise the issue that assets have been overvalued;

(b) state whether they wish that all or certain assets be put to licitation;

(c) apply that conference of interested parties be convened.

Provided that where gifted and bequeathed properties are to be returned to the mass of the

inheritance on the ground that they are inofficious, the party may apply for licitation till the date fixed for giving their say on how the partition should be effected.

415. *Who may decide on behalf of persons under disability.*— (1) The family council shall be convened, when it has to resolve whether the persons under disability should apply that the assets be put to licitation and whether they should participate therein.

(2) The resolution of the family Council shall be included in the minutes of the conference.

416. *Conference of the interested parties.*— (1) The conference of the interested parties shall be convened by the Court upon its own motion to resolve on the approval of the debts and the mode of their payment, allotment of emphyteusis as a unit to one person, over-valuation of properties, objections regarding inequalities of the lots and on any doubts or difficulties which may have a bearing on the partition.

(2) The members of the family council shall be given notice of the date of the conference, where the inventory is subject to orphans jurisdiction, and they have to intervene to resolve on the approval of debts and mode of their payment and on the allotment of emphyteusis as a unit to one person.

(3) The resolution passed by the interested parties present at the conference is binding upon those who did not attend it, unless such parties were not given notice of the conference when such notice ought to have been given to him.

417. *Debts payable by the inheritance and mode of payment.*— (1) Debts payable by the inheritance, listed or claimed, which are approved by the interested parties who are major of age and by the family council and by the parents on behalf of the minors, are deemed to have been judicially recognized, and the Court shall in the order confirming the partition, direct their payment if the amounts have not been paid before such order.

(2) When the law requires that the debt should be proved by documentary evidence of a certain probative value, the family council or the representatives of the persons under disability shall not approve the debt, unless such document or any other document of equal or of higher evidentiary value, is produced.

418. Power of the Court to decide on debts.— Where the parties who are of major age and the family council or the parents of the minors, object to the approval of the debt claimed, the Court shall, notwithstanding their objection, recognize its existence, provided the creditor produces sufficient documentary evidence for the said purpose, unless the document is challenged as being forged or evidence of equal or of higher probative value is produced which disproves it or where questions, which require a detailed inquiry, have been raised.

419. Disagreement on the approval of debts.— (1) Where there is disagreement on the approval of debts, listed or claimed, amongst the interested parties who are of major age or between them and the family council or parents of the minors, the debt is deemed to have been recognized to the extent of the share of those who approve them.

(2) The creditor shall have to file a suit for the recovery of the balance amount, unless the existence of the debts can be proved as provided in the preceding section.

420. Payment of debts fallen due.— (1) The debts which have already fallen due and are approved by all the interested parties shall be paid immediately in case the creditor demands their payment. Where the inheritance does not have sufficient funds, the Court shall order that the assets be sold for the said purpose by public auction. The Court shall determine which are the assets to be sold, when there is no agreement in that respect amongst parties who are of major age or between them and the family council and the parents of the minors.

(2) If the creditor wishes to receive the payment in assets set apart for sale, the said assets shall be adjudicated to him for the price which has been fixed by the Court.

(3) A private sale shall be held in case all the interested parties agree, or in case of a mandatory inventory, the Court so decides, after hearing the family council and the personal representatives of the minors.

(4) When the assets are to be sold by private sale, the interested parties or the Court shall appoint a person and empower him to sell and shall fix the minimum price. The appointed person shall carry out the sale accordingly and submit his report to the Court.

(5) Movable shall be sold by auction at the place where they are lying or in a nearby place where they may be transferred without causing damage or heavy expenses.

(6) Where an irregularity is committed during the auction or it is discovered that assets have been fraudulently described and such fraudulent description has caused grave injury to any party, objections may be filed by such party and the Court shall decide on the objections, after recording such evidence as is deemed necessary. If the Court is satisfied that irregularities materially vitiating the auction have been committed, the auction shall be set aside.

(7) The Court may then hold the auction in the Court premises or the assets may be sold by private sale.

(8) The preceding provisions shall apply also to debts which were approved by the Court in accordance with the provisions of section 417 and 419, in case the respective order has become final and no appeal has been preferred before the chart of partition is drawn up.

421. When debts are approved by some of the interested parties only.— Where a debt has fallen due but it is approved by some of the interested parties only, the creditor may demand from such parties payment of their corresponding share of the liability. The payment shall be effected immediately, where there are funds, out of the shares of those parties who have approved the debts; where there are no funds, the payment shall be made out of the assets allotted to such parties after partition.

422. Resolution on mode of payment of debts.— (1) Notwithstanding that the creditors do not demand the payment of the debts which have fallen due and are approved, the parties may resolve on the mode of payment, either by setting apart money or properties for the said purpose entrusting the payment to one or some of them, or deciding that the debt shall be shared by them in proportion to the assets allotted to them.

(2) The parties may also resolve on the mode of payment of the debts which have been approved but have not yet fallen due.

(3) The resolution, which entrusts the payment to one or some of the parties, binds the creditors

but where the creditors do not get fully paid with the properties handed over to the party or parties entrusted with the payment, the creditors may attach the properties adjudicated to the other interested parties.

Where the debts have been approved by some of the parties only acting for themselves, by the family council or by the parents of the minors, only they can resolve on the mode of payment.

423. *When do legatees decide on the mode of payment of debts.*— The legatees may resolve on the liabilities and the mode of their payment, only when the entire inheritance is distributed by way of legacies or when the approval of debts will result in reducing the legacies.

424. *Insolvency.*— Where the debts approved by the parties or recognized by the Court exceed the mass of the inheritance, the procedure laid down in the law of insolvency in force shall be followed.

425. *Emphyteusis.*— Where an emphyteusis forms part of the inheritance, it shall be resolved to whom the emphyteusis shall be allotted as one unit. If none of the parties wishes to have the emphyteusis, the emphyteusis shall be sold and the proceeds shall be divided. Where the parties do not agree as to whom the emphyteusis should be allotted, the emphyteusis shall be put to licitation.

426. *Overvaluation of assets.*— (1) Where any of the parties contends that the value given to any of the assets is excessive, he shall state which according to him is its fair value and the interested parties shall in the conference resolve as whether the value shall be maintained or decreased. In the latter case, the value shall be fixed in such conference.

(2) But, where a party declares that he accepts the thing for the value given to it, the value shall not be decreased. Such a declaration shall amount to licitation. Where more than one party accepts the valuation, licitation shall be held amongs them and the thing shall be adjudicated to the highest bidder. In case the parties are unable to fix the value, the value given shall subsist.

(3) The objection regarding overvaluation may be raised orally during the conference.

CHAPTER XLI LICITATION

427. *Licitation of asset which is not susceptible to division without detriment.*— (1) Where any party to the proceeding applies that an asset, which by its nature is not susceptible to division without detriment, be put to bid but, any co-heir having a major share in it other than by reason of marriage, succession, gift or bequest by the person who leaves the inheritance and such co-heir objects to the licitation, then the licitation shall not be held. In this eventuality, the party may apply for a second valuation.

(2) Second appraisal may also be made when the said co-heir applies for a second valuation on the ground that the thing in which he has the major share, has been overvalued.

(3) The head of family may, at the time he submits the list of assets, raise the issue of indivisibility of the properties and, if he raises such an issue, the valuer shall give his opinion on the divisibility at the time of the valuation. When such an issue is raised at a later stage and there is no agreement between the parties, the issue shall be decided after hearing the valuer.

(4) Where the thing is not subject to valuation the question of indivisibility shall, in the absence of agreement, be decided by the Court after the expert appointed by the Court inspects the properties and gives his report.

(5) The provisions of this clause are also applicable where there are no forced heirs and the estate leaver has gifted to one of the co-heirs, legal or testamentary, a major share in the thing which, by nature and without detriment cannot be divided and so also where in terms law or by reason of a contract, the things cannot be put to licitation or bid.

428. *Licitation of gifted assets.*— (1) When any party applies that assets gifted by the estate leaver be put to licitation, and the donee, irrespective of whether he has to collate or not, object to the gifted thing being put to bid, a second valuation of the respective assets shall be ordered to be done. The objection of the donee, if any, may be filed within 30 days of the service of the application.

(2) After the second valuation is done and the licitation of the other properties is over, the

application shall become ineffective where it is found that the donee is not bound to return any property.

(3) Inofficious gifts: Where the Court finds that the gift is inofficious, the following provisions shall be followed:—

(a) Where the application is in respect of an asset which is susceptible to division, licitation in respect of the part which the donee has to return may be held but the donee shall not be allowed to take part in the licitation.

(b) Where the application pertains to an asset which by its nature is not susceptible to division without detriment, licitation may be held and the donee is allowed to take part in it.

(c) If none of the preceding provisions of this chapter are applicable, the donee shall be permitted to choose such of the gifted assets as are necessary to fill up his share in the inheritance and the charges or encumbrances on the gift. The donee shall return the properties in excess of his share and the assets so returned shall be put to licitation, if applied for, or has already been applied for, but, the donee shall not be allowed to take part in the licitation.

(d) The objection of the donee, should be raised within 30 days of the service of notice of the application if, at that time, licitation of the gifted assets has already been applied for or during the conference itself where licitation is applied for and the donee is present. If none of the above conditions are satisfied, the donee shall be notified before the licitation to raise has objection within 10 days.

(4) Irrespective of any application referred to in this section, the donee may apply for a second valuation of some or all the gifted assets, within 30 days from date of notice of the first valuation, it is found that the gift is inofficious.

429. *Licitation of bequeathed asset.*— (1) Where any party applies that the bequeathed assets be put to licitation, the legatee shall be notified to give hissay, if any, within three days.

(2) If the latter objects, no licitation shall be held, but it is lawful to the heirs to apply for second valuation of the assets, when the undervaluation of the assets may affect them adversely, within 30 days from the date of objection.

(3) Where the legatee does not object, the licitation shall be held and the legatee shall have a right to the respective value.

430. *When licitation is to be held.*— (1) The licitation shall be held within 30 days from the date the conference is held, if possible.

(2) Every licitation shall be conducted by an officer appointed for the purpose by the court. However, such officer shall not declare the highest bidder without the leave of the court.

(3) It is lawful to withdraw the request to have licitation till such time the respective item is put to bid; in such an event, however, any other party shall be allowed to apply for licitation on the same item.

431. *Licitation defined.*— (1) Licitation is a family auction in which only heirs and the moiety holder spouse of the estate leaver or of the deceased heir are allowed to participate, except in cases where, in terms of the preceding section, the donee or the legatee should also be allowed to make a bid. Such of the properties of the inheritance which are not necessarily to be allotted to any particular party, only may be put to licitation.

(2) The constituted attorney of a person entitled to participate in the licitation may bid on his behalf provided specific powers for such purpose have been conferred on him by the power of attorney. The power of attorney or a true copy thereof duly certified by a notary public shall be placed on record.

(3) Each item as described in the final list shall be put to bid individually, unless all parties agree to form lots for that purpose, or where there are some properties which cannot be separated without inconvenience. Different parties, may, by agreement, offer a bid over the same item or lot so that may be allotted to them in common. Such a bid shall be deemed to be one indivisible bid and the parties shall be jointly and severally liable to pay or deposit the entire bid amount.

(4) Once the parties have struck down an asset in the licitation, they cannot resale from it.

(5) Immediately after the licitations are over, the parties who have struck down assets are entitled to request the Court to hand over the possession of the respective assets to them subject to the decision passed in appeal, if any.

(6) Licitation is not a sale in law but a mere partition of the assets of an inheritance. Each heir shall be deemed to be the sole successor of the assets allotted to him from the date of the opening of the inheritance.

432. *When licitation may be annulled.*— Where the Court is satisfied that the interest of any party under disability have not been properly taken care of by his personal representative during the licitation, the Court may within 2 weeks from the date of licitation, after hearing the parties, annul the respective auction by a reasoned order.

CHAPTER XLII SECOND VALUATION

433. *Second Valuation.*— (1) Where the first valuation discloses that the legacy is inofficious, the legatee may, within 30 days of the notice of first valuation, irrespective of the application referred to in section 429, apply for second valuation, either of the bequeathed properties or of any other properties which have not been valued for the second time.

(2) The legatee may also apply for second valuation of other properties of the inheritance when it is found, on the basis of second valuation of bequeathed properties and of the licitation, that the legacy has to be reduced on the ground that it is inofficious. The assets which have been auctioned shall not be excluded from second valuation, if the value given in the second valuation is higher than the highest bid offered in licitation. The auctioned assets shall be allotted on the basis of second valuation and not on the basis of the highest bid in licitation.

434. *Inofficious legacy.*— (1) Where the legacy is inofficious, the legatee shall return, the excess, in specie. Such excess may be subject to licitation in which the legatee shall, not be allowed to participate.

(2) Where the bequeathed thing by its nature or without detriment, cannot be divided, the following shall be observed:-

(i) The return shall be made in cash, when the inofficious part is smaller than the other part, and in such a case any party may apply for the second valuation of the bequeathed thing;

(ii) The return shall be done in specie if the inofficious part is equal or larger than the other

part, and in such case the legatee may apply for the bequeathed thing be put to licitation.

The provisions of clause (c) of sub-section (3) of section 428 shall be applicable to the legatee also.

435. *Procedure for Second Valuation.*— (1) The second valuation shall be done by three valuers appointed by the consent of the parties. In the absence of such agreement, each side shall appoint one valuer and the Court shall appoint third valuer. The co-heir, donee, or legatee, referred to in sections 427, 428 and 429 shall form one side and the other parties, competent or under disability, shall form the other side. The minors and other persons under disability shall be represented at the time of the valuation by their parents, or by the guardians and curators.

(2) Where there are more than one co-heir, donee or legatee in the circumstances mention in section 427 to 429, all of them who have common interest shall constitute one block against the other parties.

436. *Scheme of Partition.*— (1) Upon completion of valuation of assets and licitation, if any, the heirs, head of the family, and the moiety holders shall submit to the Court a scheme of partition within 30 days and the Court shall thereafter make an order thereon showing the mode of partition. In the said order, the Court shall decide all questions including questions which have not been decided till then and which have to be necessarily decided for drawing the chart of partition.

(2) The Court may, in exceptional cases, direct the parties to lead such evidence as may be necessary to effect the partition but, if there are questions which require a detailed inquiry, the Court shall direct the parties to file a Civil Suit, if they so desire. Questions which are required to be decided in the normal course of the inventory proceeding shall not be left to be decided at the time of passing the order on how the partition should be effected.

(3) No appeal shall lie from the order deciding on the mode of partition. However, such order may be challenged in the appeal, if any, preferred against the final order confirming the partition.

437. *Procedure for filling up the shares of the parties.*— The procedure hereunder shall be followed for the purpose of filling up of the shares of the parties in the inheritance:—

(a) Gifted assets or assets struck down in the licitation shall be allotted to the respective donee or bidder.

(b) Assets of the same kind and nature as the properties gifted or struck down in the licitation shall be allotted to the parties who do not collate or to the parties who are not the highest bidders.

(c) When it is not possible to satisfy the co-heirs with assets of the same kind and nature, where the gifted assets are immovable, the said co-heirs shall be entitled to be identified in money and, if there are no fund in the inheritance, as many assets as may be necessary to secure the sum due, shall be sold in public auction.

(d) However, if the gifted assets are movables, the co-heirs shall be entitled to be satisfied with other movables of the inheritance according to their value.

(e) The same principle shall be followed if some heirs have received legacies, to compensate the co-heirs who have not received legacies.

(f) The remaining assets shall be distributed by drawing lots amongst the parties, after forming equal lots.

(g) Debts due to the inheritance which are disputed, debts which are not sufficiently proved, and assets which have no value shall be distributed proportionately amongst the parties. Debts due by the inheritance which have been approved by all the parties, shall be allotted proportionately unless a different mode of payment is agreed upon.

CHAPTER XLIII

CHART OF PARTITION

438. *Chart of Partition.*— (1) After the Court passes the order on the scheme of the partition, the clerk of the Court shall draw a chart of partition within 10 days, complying with the order and the provisions of the preceding sections, subject to the provisions of section 437.

(2) The chart shall be drawn in the following manner:—

(i) The total amount of assets shall be determined by adding the values of each kind

of assets as attributed to them in the valuation and in the licitation and by deducting debts which have to be paid by inheritance, legacies and encumbrances which ought to be reduced;

(ii) The amount of the share of each party shall be worked out and also the part which is allotted to the party in each type of asset, shall be shown lastly;

(iii) The allotment of each share will be done by referring to the number of the item in the final list of assets and liabilities.

(3) The lots which have to be drawn by sortition shall be designated by alphabetical letters.

(4) The values shall be indicated by figures only. The numbers of the items of the final list of the assets and liabilities shall be shown in figures and in words and when they are continuous, only the terminal numbers within which the numbers are comprised shall be recorded.

(5) Where a fraction of the items has been allotted to the co-heirs, such fraction shall be mentioned.

(6) In each lot, the nature of the assets of which it is comprised, shall be shown.

(7) The Court shall initial every page of the chart of partition and confirm by a note, the corrections, erasures or interlineations.

439. *Preliminary Chart.*— (1) Where, at the time of drawing the chart, the clerk of the Court finds that the properties gifted, bequeathed or struck down in the licitation exceed the share of the respective party or the disposable portion of the estate leaver, he shall prepare a preliminary chart indicating exactly what is the amount in excess.

(2) Upon perusal of the preliminary chart submitted by the clerk of the Court, the Court shall issue the following directions:—

(a) Where amidst the properties gifted to a co-heir there is an indivisible property which does not fit as a whole in the share of the donee, the Court shall direct that such property shall form part of the mass of the partible properties as any other property of the inheritance;

(b) In other cases, the Court shall issue notice to the donee to exercise within 10 days his right to choose from amongst the gifted properties

those necessary to make up his share in the inheritance and, if he fails to exercise such choice, his share shall be filled with such properties as the Court deems fit;

(c) Where the gift made to a stranger is inofficious it shall be reduced in accordance with sections 112 to 122 of this Act;

(d) The Court shall notify the unsuccessful bidders, and those who did not take part in the licitation, who are to be paid owelty monies by the successful bidders, to demand within 10 days the payment of the owelty money, if they so desire, unless such amount has already been deposited; Where the payment is not demanded, owelty money shall carry an interest @ 5% p.a. from the date of the final order confirming the partition and the creditors shall have a lien on the properties allotted to the debtor. If the demand is made, the successful bidder shall be notified to deposit within 15 days the amount due and, if he fails to pay, the licitation shall stand cancelled and the Court shall fix a fresh date for licitation. The party who has defaulted in paying owelty money shall not be allowed to participate in the new licitation.

(3) When two or more parties have made a joint bid for a property, they shall be jointly and severally liable for the entire owelty amount and, in the event the entire owelty amount is not paid or deposited within time, the licitation shall stand cancelled in respect of the entire property and none of the defaulting parties shall be allowed to take part in the new licitation.

440. *Rectification.*— (1) The parties may, if necessary, within 10 days after the preliminary chart is drawn, apply for rectification of the partition or may object that the lots are not equal or that the order directing the partition has not been complied with. Such objection shall be decided within the next 10 days. The conference of the parties may be convened if the objection is as regards the inequalities of the lots.

(2) The order upholding the objection shall direct that the necessary modification be made to the chart. If necessary, a new chart of partition shall be drawn up.

441. *Sortition.*— Upon disposal of objections to the preliminary chart, lots shall be drawn, if required. Each lot shall be identified by an

alphabetical letter, which shall be written on pieces of papers and placed in a box. At the time of drawing of the lots, first preference shall be given to the moiety holder of the estate leaver. So far as the co-heirs are concerned, the order of priority shall be alphabetical order of their names, starting with first name. The Judge shall draw lots on behalf of the parties who fail to remain present for the sortition. The name of the party to whom the lot falls shall be recorded in the file. After the draw of lots is over, the parties are free to exchange between themselves the lots, which have fallen to them. However, to exchange the lots fallen to the persons under disability, the Court's permission has to be obtained. In the case of a prodigal, so declared by the Court, the exchange shall not be permitted, unless the prodigal consents thereto.

442. *Second and Third Chart of partition.*—
Second Chart

(1) When the moiety holder of the estate leaver, is a party, the chart shall consist of two portions and after the portion of the estate leaver is ascertained, a second chart shall be drawn for partitioning the said portion amongst the heirs.

Third Chart

(2) Where, by reason of the right of representation, the shares are unequal, after the determining the share of the person who is represented, a third chart shall be drawn to partition the shares amongst the representatives.

(3) When any heir is benefited with a major part of properties, the lots shall be formed, if possible, in such a way that the draw of lots amongst the other co-heirs be done out of equal portions.

(4) Where it is not possible to draw the second chart and have a sortition in respect of the second chart at the time sortition of lots of the first chart is made and so also when it is not possible to have a sortition of the lots of the third chart at the time the sortition of the lots of the second chart is made, the provision applicable in relation to the first chart shall be followed, both as regards the drawing of the charts as well as regards drawing of lots of the second and the third chart.

CHAPTER XLIV CONFIRMATION OF PARTITION

443. *Confirmation of the Partition.*— (1) The Court shall make a final order declaring who are the successors or heirs of the estate leaver and confirming the partition in accordance with the chart of partition and the draw of lots within 10 days, after evidence of payment of duty is produced. The order confirming the partition shall have the force of the decree and accordingly a decree shall be drawn.

(2) The decree shall contain-

(a) the name of the original applicant and of the estate leaver;

(b) names of the heirs or legatees and creditors;

(c) description of the assets;

(d) chart of Partitions;

(e) Outstanding debts due by the inheritance or heirs including their approval and mode of payment;

(f) Order confirming the partitions.

(3) A party to an inventory proceeding may file a certified copy of the partition decree with the Registering Officer under the Registration Act, 1908 (16 of 1908) within the local limits of whose jurisdiction the whole or any part of the assets is situated and such officer shall file such decree in book No.1 maintained under Section 51 of the Registration Act, 1908 (16 of 1908).

444. *Costs.*— The costs of the inventory shall be paid by the heirs and the moiety holder, in proportion to what they have received and, where the inheritance is distributed by way of legacies only, the legatees shall be liable for the payment of costs in the same proportion.

445. *Safeguards to be observed when the assets are delivered before the order of homologation becomes final.*— An interested party may receive the assets which have been allotted to him in the partition before the order of homologation becomes final; however, the assets shall be handed over only upon such party furnishing security, in case of negotiable instruments, shares and securities an endorsement shall be made that the holder shall not transfer or assign such assets, without the order of the Court. Security shall also be obtained

in cases where a paternity suit, suit for annulment of a will or any other suit the decision of which is likely to affect the partition is pending.

446. *Fresh Partition.*— When, as a result of a decision in an appeal or a suit, it is necessary to make a fresh partition, the head of the family shall immediately be put in possession of the properties which no longer belong to the party who has received it. The inventory shall be corrected only to the extent it is strictly necessary to implement the decision and the valuation and description of the assets shall be maintained notwithstanding that there is a complete substitution of the heirs.

CHAPTER XLV

AMENDMENT AND RESCISSION OF PARTITION

447. *Amendment of Partition.*— The partition may be amended, even after it has become final and no appeal has been preferred, in the very same inventory proceeding by agreement of the parties or their representatives, where there is a mistake of facts in the list of assets or in the classification of the assets or any other error, which vitiates the will of the parties:

Provided that where in the order there are clerical or arithmetical mistakes or any material errors arising from accidental slip or omission, they may be corrected at any time by the Court, either of its own motion or on application of any of the parties.

448. *Suit for amendment of partition.*— A party may file a suit for amendment of the partition, when subsequent to the final order the party acquires knowledge of a mistake of fact or classification or other error which vitiates the will of the party, and the other parties are not in agreement to have the partition amended, amicable.

449. *Rescission of partition.*— (A) Suit for rescission:

(1) A suit for rescission of the judicial partition which has become final, may be filed where there is preterition or non joinder of any of the co-heirs and if it is found that the other parties acted fraudulently or malafide, whether the malicious

conduct relates to the preterition or to the partition.

(B) Application for review:

(2) Rescission of a judicial partition may be obtained by filing a review application in the same Court in the following circumstances:—

(a) When it is proved in criminal proceeding, resulting in a conviction which has become final, that the order which is sought to be reviewed was passed by giving of bribe, corruption or influence;

(b) When a judgement and order of conviction which has become final is produced wherein it was held that the depositions or declarations of the experts, which might have affected the order that is sought to be reviewed, are false.

The period of limitation to file a review on both the above grounds is 30 days reckoned from the date on which the order on the basis of which the review is filed had become final.

(3) The review application may be filed in the very same Court which passed the order, within 30 days from the date on which the party has secured the document or acquired knowledge of the fact which is the basis for the review, on the following grounds:—

(a) When a decision is based on a false document or judicial act and this issue was not considered in the proceeding when the decision was given;

(b) When a new document is produced, which was not in the possession or power of the party or the party did not know about the existence and such document is itself sufficient to cancel the evidence on which the decision is based;

(c) When the admission, withdrawal or compromise on which the judgement is based, is revoked or there is a valid ground for revoking the same;

(d) When the admission, withdrawal or compromise is null, due to lack of mandate or insufficiency of powers of the attorney, unless the order homologating or ratifying the partition has already been personally served on the principal;

(e) When the inventory proceeded by default and the party was not served with summon or the summon is null;

(f) When the judgement is contrary to another judgement which constitutes *res judicata* and the party proves that he had no knowledge of the judgement during the pendency of the proceeding.

(4) Where the rescission is sought on the basis of a document, the plaint or the review petition, as the case may be, shall be accompanied by the respective certified copy.

450. *Settlement of share of the heir left out in the inventory.*—(1) Where the heir left out wishes to have his share paid in cash, he may apply in the inventory that a conference of the parties be convened to work out the value of his share.

(2) Where the parties do not reach an agreement, the assets in respect of which there is a difference in value shall be valued again and the parties may apply for a second valuation and, thereafter, the amount to which such heir is entitled, shall be fixed by the Court.

(3) A fresh chart of partition shall be made so that the changes resulting from the payments necessary to make up the share of the heir who was left out, are known. No sooner the share is settled, such heir may apply that the debtors be notified to effect the payment, failing which they will be bound to make good his share by way of the assets, without prejudice, however, to the alienations already made. If the demand is not made, and the amount due is not deposited by the respective parties, the money due shall earn interest @ 6% p.a. from the date of the order.

451. *Finality of the decision.*— (1) Questions decided in the inventory proceeding, other than the questions decided by order made under section 436; shall be considered as having attained finality, as against the head of the family and the persons summoned as heirs, and so also as against the parties who were given an opportunity to be heard before the decision, unless the right to file a suit is expressly reserved by the Court.

(2) Where the questions involved are questions of law or questions of fact which can be decided on the basis of documents produced or ordered to be produced, the Court shall not reserve the right to file a suit.

(3) As regards questions of fact which have to be proved by adducing other evidence, the Court

may decide the question provisionally reserving the right to file a suit when a finding on merits can be given without holding a detailed inquiry.

CHAPTER XLVI

APPEALS

452. *Appeals.*— (1) An appeal from the final order made in the inventory proceeding shall lie to the competent Court depending upon the value of the assets and such appeal shall be deemed to be an appeal under section 96 of the Code of Civil Procedure, 1908 (5 of 1908).

2) An “appeal from order” shall lie from every order, other than a merely administrative order, made in inventory proceeding to the competent Court depending upon the value given to the assets at the time the order is made and appeal shall be deemed to be an appeal under section 104 of the Code of Civil Procedure, 1908 (5 of 1908).

CHAPTER XLVII

PREVENTIVE MEASURES

453. *Appointment of Receiver.*— (1) After the filing of the inventory proceeding, pending appointment of the head of the family, where there is a just apprehension that the assets of the estate are in danger of being wasted, damaged or dissipated or alienated, the Court may, upon an application of any party interested in the preservation of the assets, and, or of its own motion, order that a list of the assets with their description and estimated value, be prepared. The Court shall place the assets in the custody of a Receiver who may be either the applicants the person in possession or any other interested party. The Receiver shall manage the assets and render accounts. The list of assets prepared under this clause shall form part of the list of assets in the inventory proceeding.

(2) When the Court is satisfied that the delay will defeat the very object of the relief sought, it may pass such order, ex-parte.

(3) Upon hearing the person dispossessed by the ex parte order, the Court may either confirm or vacate the ex parte order passed. In case it is confirmed, such assets shall be handed over to the head of the family appointed in the inventory proceeding.

454. *Temporary Injunction.*— When an interested party has reasonable apprehension that another interested party may cause damage to the assets of the inheritance, or commit acts which may cause grave and irreparable injury to his right, he may apply for a temporary injunction or such other order as may be just and proper to avoid such injury or damage. The Court may pass an interim ex parte order, when it is satisfied that the delay will defeat the very object of the relief sought.

CHAPTER XLVIII

MISCELLANEOUS

455. *Cause Title.*— (1) The cause title in the initial petition instituting inventory proceeding shall set out the name and full address of the petitioner and the name and the permanent residence of the estate leaver.

(2) It shall be the duty of the head of the family to submit a fresh cause title in inventory proceeding setting out the names of the estate leaver, the petitioner, head of the family, and also the names of all the impleaded interested parties.

(3) It shall be the duty of the head of the family to submit to the Court an amended cause title whenever a party is added or deleted.

(4) The causes title in the inventory proceeding shall be in the form as specified below subject to such modifications as may be require.

In the Court of
Inventory Proceeding No..... of
IN THE MATTER OF INHERITANCE OF THE
LATE XYZ
1. ABC.....
2. LMN.....
And
3. PQN
4. RST etc.....
.....
Petitioner
Head of the family
Interested Parties

456. *Stamp duty payable.*— (a) The inheritance shall be liable to pay stamp duty of one percent of the net value of the assets as shown in the chart of partition.

(b) The interested parties shall be liable to share the duty payable in proportion to their share in the inheritance.

(c) Where any of the interested parties does not pay his share of the duty payable, any other interested party may pay such share of duty and recover the amount in the same proceedings with interest at the rate of 10% per annum. Where the defaulting party is entitled to owelty, such amount shall be adjusted against the owelty, and for the balance, there shall be a charge on the assets allotted to him and he shall not be entitled to the possession of those assets.

457. *Fixation of the amount of costs.*— (a) The costs of inventory proceeding shall be at the discretion of the Court.

(b) Where a party is guilty of causing unjustified delay, the court may, for reasons to be recorded make an order requiring such party to pay to the other party or parties such costs as it deems fit.

458. *Enforcement of Order.*— (1) After the final order of partition is made, any party to whom assets have been allotted, may apply in the inventory proceeding that such assets be handed over to him.

(2) If the party in possession fails to hand over immovable assets the delivery of possession shall be made by the Court by removing such party from possession of the assets. With regard to movables, the delivery of possession shall be made by the Court by handing over such assets to such party.

(3) Where monies are payable, the Court shall order the party to liable to pay, to deposit the amount due in the Court within a reasonable period failing which the Court shall Proceed to attach the assets of the defaulting party and sell them in the public auction. The amount realized by such auction shall be paid to the party entitled to it. The balance, if any, shall be refunded to the defaulter.

(4) Any order, other than the final order, which is enforceable, shall be enforced in the manner set out in this section.

(5) The defaulting party shall bear the cost of the attachment and sale.

459. *Summary Proceeding.*— Inventory proceeding shall be summary proceeding and shall not be governed by the Code of Civil Procedure, 1908 (5 of 1908) unless specifically Provided for.

460. *Power to make rules.*— The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

461. *Repeal and Savings.*— (1) On and from the date of coming into the force of this Act, all provisions of the laws in force at present corresponding to any of the provisions of this Act shall be stand repealed.

(2) Notwithstanding such repeal,—

(a) anything duly done or suffered or; any right, privilege, obligation or liability acquired, accrued or incurred or any penalty, forfeiture or punishment incurred under any law so repealed shall be deemed to have been done, suffered, acquired, accrued or incurred, as the case may be, under the corresponding provisions of this Act;

(b) any fee, duty, charges, fine, etc payable under any law so repealed or any books, forms, etc in use of under any law so repealed shall, to the extent permissible and expedient, continue to be payable or used, as the case may be, till new fees, duties, charges, fines, books, forms, etc are prescribed or fixed, as the case may be, under the provisions of this Act.

(3) All proceedings pending under the repealed laws before any Court in the State of Goa, as on the date of the coming into force of this Act shall be continued in terms of the procedure provided in this Act.

Statement of Objects and Reasons

The provisions of the law relating to succession, notaries and inventory proceeding were dispersed in the Civil Code, 1867, in force with effect from 01/07/1870, as amended from time to time; the Civil Procedure Code of 1939 in force from 01/01/1941; Notarial law contained in articles 1,4,6,25 to 29,34,35,36,38 to 49,63 to 108 of Decree No. 8373, Government Order No. 14157 dated 14/11/1952, Article 1 of Decree Law No.32033 and Article 179 of Law No. 49 articles 192, 193, 194 and 195 of decree No. 26118.

All this became Laws of the land by virtue of section 5 of the Goa, Daman and Diu

(administration) Act, 1962 (1 of 1962) until amended by competent Legislature.

Further, the original text of these provisions, scattered at times in several at times in several enactments, are in Portuguese language and hence the Courts, the Members of the Bar and the Litigants faced practical difficulties in their application. This caused delays in disposing of cases.

A Pressing need was felt to consolidated the various provisions of Law into one comprehensive, rational and integrated legislation, to facilitate their application and implementation by the Bench, the Bar and the litigants.

Considering the need to take into account the social changes and the new situations arising from the fact that Goa is now a state of the Union of India and Goans are citizens of India and considering also that the Laws which in force were applicable to an altogether different set of political circumstances, it has become necessary to amend the Law to meet the present day requirements and to make it workable.

Further, in view of noteworthy new principles that have evolved, a more humane and fair outlook is now taken on illegitimacy, on mentally challenged persons and on such other persons upon whom a stigma was cast in the past for no fault of theirs. These principles and outlook have been adopted in framing the present law.

That object is sought to be achieved by this Bill which deals with the law of succession, special Notaries and the Inventory proceedings.

While drafting the Bill, the following Legislations have been kept in view:

(a) The provisions of the Portuguese Civil Code enacted in Portugal in 1966, replacing the Civil Code of 1867 and the Code of Civil Procedure of 28/12/1961, replacing the Code of Civil Procedure of 1939, as well as Decrees amending from time to time many provisions of the aforesaid Code on the subject of succession and inventory and notarial

Law, and the Law approved by Decree Law No. 207 dated 14/08/1995 and amendments thereto.

(b) The Provisions of Louisianan Civil Code, 1870 (based on Napoleon Code), in force in the State of Louisiana of the United States of America as originally enacted, and the subsequent amendment included by Act of 1981 No. 919 effective after 31/12/1981 and Act of 1990 No. 147 with effect from 1/7/1990.

(c) Legislation in force in the rest of India.

(d) There are some original provisions which have been incorporated bearing in mind the present circumstances.

The subject of succession, partition, execution of wills with corresponding notarial acts and inventory proceeding meant for partition of the estate through the Court fall within the purview of entry 5 of List III-Concurrent List of the seventh schedule to the Constitution of India and in view of section 5 of the aforesaid Goa, Daman and Diu (administration) Act, 1962 (1 of 1962), the legislature of the state of Goa is competent to enact Law on the subject.

This Bill seeks to achieve the above objects.

Financial Memorandum

No financial implications are involved in this Bills.

Memorandum Regarding Delegated Legislation

The Bill empowers the Government to make the rules to carrying out the purposes of the Act.

This delegation is of normal character.

Assembly Hall,
Porvorim, Goa.
28th August, 2008.

(DIGAMBAR KAMAT)
Minister for Law

Assembly Hall,
Porvorim, Goa.
28th August, 2008.

R. KOTHANDARAMAN
Secretary (Legislature)

LA/LEGN/2008/1852

The following bill which was introduced in the Legislative Assembly of the State of Goa on 25-8-2008 is hereby published for general information in pursuance of Rule-138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

THE GOA CO-OPERATIVE SOCIETIES (AMENDMENT) BILL, 2008

(Bill No. 37 of 2008)

A

BILL

further to amend the Goa Co-operative Societies Act, 2001 (Goa Act 36 of 2001).

BE it enacted by the Legislative Assembly of Goa in the Fifty-ninth Year of the Republic of India, as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Goa Co-operative Societies (Amendment) Act, 2008.

(2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. *Amendment of section 2.*— In section 2 of the Goa Co-operative Societies Act, 2001 (Goa Act 36 of 2001) (hereinafter referred to as the “principal Act”),—

(i) clause (16) shall be omitted;

(ii) after clause (30) and before clause (31), the following clause shall be inserted, namely:—

“(30A) “nominal member” means a person admitted to membership as such after registration in accordance with the bye-laws.”.

3. *Amendment of section 15.*— In section 15 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) Where any society is found to be degenerating in its operation and the share value of such society has come down below

its face value as on the last day of the year immediately preceding its revaluation, the Registrar may, in the interest of members, suo-motu, direct the society to,—

- (a) amalgamate with another society;
- (b) transfer its assets and liabilities, in whole or in part, to any other society;
- (c) divide itself into two or more societies; or
- (d) convert itself into another class of society.

In case the society fails to complete the process of amalgamation, transfer, division or conversion, as the case may be, within 45 days from the date of such direction, the Registrar shall order the amalgamation, transfer, division or conversion, as the case may be, of such degenerating society. All claims of members, creditors and other interested persons of such society as on the date of such order shall stand transferred to the society with which such degenerating society may have been amalgamated, or to the society to whom assets and liabilities have been transferred or to the society formed after division or conversion, as the case may be”.

4. *Amendment of section 20.*— In section 20 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely:—

“(6) Surplus remained after the process of de-registration shall be transferred to “Surplus Fund Account” of the Registrar.

Explanation:— For the purpose of this sub-section, “Surplus Fund Account” means account maintained for the purpose of surplus referred to in this sub-section”.

5. *Amendment of section 21.*— In section 21 of the principal Act, in sub-section (3), the proviso shall be omitted.

6. *Insertion of new section 23A.*— After section 23 of the principal Act, the following section shall be inserted, namely:—

“23A. Nominal member.— Subject to the provisions of section 21, a society may admit any person as nominal member on payment of entrance fee as specified in the bye-laws”.

7. *Amendment of section 25.*— In section 25 of the principal Act,—

- (i) in clause (2), for the word “two”, the word “five” shall be substituted;
- (ii) in clause (3), for the word “three”, the word “five” shall be substituted;
- (iii) after the existing proviso, the following proviso shall be inserted, namely:—

“Provided further that the provisions of clauses (2) and (3) above shall not apply to the members elected to the representative general body in accordance with section 69. However, the representative elected to the representative general body shall be deemed to have been disqualified in case he fails to attend two consecutive general meetings and the resulting vacancy shall be filled by conducting bye-election within a period of six months from the date of such disqualification. The term of the representative elected in the bye-election shall be co-terminus with other elected representatives”.

8. *Amendment of section 28.*— In section 28 of the principal Act, in sub-section (1), for the second proviso, the following proviso shall be substituted, namely:—

“Provided further that in the case of an equality of votes, the Chairman shall have a casting vote except at the time of election of office bearers and at the time of no confidence motion against office bearers.”

9. *Amendment of section 50.*— In section 50 of the principal Act, the following proviso shall be inserted, namely:—

“Provided that the resource societies, urban co-operative credit societies and banks, apex co-operative bank may receive deposit from non-members.”

10. *Amendment of section 52.*— In section 52 of the principal Act,—

- (i) for the expression “The society shall, out of its net surplus”, the expression “If provided in it’s bye-laws, the society shall, out of it’s net surplus” shall be substituted;
- (ii) after clause (g), the following provisos shall be inserted, namely:—

“Provided that the co-operative banks and urban co-operative credit societies may, instead

of making deferred payment to their members as patronage refund, issue bonus shares as **prescribed:**

Provided further that if any society has not made patronage refund as specified under this section then, the entire amount of net surplus shall be appropriated in the proportion as mentioned in clauses (a) to (g) above.”

11. *Insertion of new sections 58A and 58B.*— After section 58 of the principal Act, the following sections shall be inserted, namely:—

“58A. *Special general meeting.*— (1) A special general meeting may be called,—

- (i) at any time by the Chairman; or
- (ii) within one month from the date of submission of a requisition in writing to that effect by atleast one-tenth of the total number of members of the society or by atleast one-tenth of the total number of elected representatives or by such number of members as specified in the bye-laws for the purpose; or
- (iii) at the instance of the Registrar; or
- (iv) in the case of a society which is a member of a federal society, at the instance of the committee of such federal society.

(2) Where, any officer or a member of the committee, whose duty is to call such meeting, fails, without reasonable excuse, to call such meeting, the Registrar may, by Order, declare such member as disqualified for being a member of the committee for such period not exceeding five years, as he may specify in such order or impose on such officer a penalty not exceeding one hundred rupees for each day of default. Before making an order under this sub-section, the Registrar shall give, or cause to be given, a reasonable opportunity to the person concerned for showing cause as to why the action proposed should not be taken against him.

(3) If a special general meeting of a society is not called in accordance with the requisition referred to in clause (ii) of sub-section (1), the Registrar or any person authorized by him in this behalf, shall have power to call such meeting and that such meeting, when called, shall be deemed to be a meeting duly called by the committee.

(4) The Registrar shall have the power to order that the expenditure incurred in calling a meeting under sub-section (3) shall be paid out of the funds of the society or by such person or persons who, in the opinion of the Registrar, were responsible for the refusal or failure to convene a meeting.

58B. No confidence motion against the Director or a group of Directors or entire Board of Directors.— (1) A Director or a group of Directors or the entire Board of Directors of a society shall be removed from his/their Directorship, if no confidence motion is passed against him/them by a majority of the Representatives of the society.

(2) A notice to this effect is required to be given by at least one-third of the total number of representatives of the society and the requisition shall be made to the Registrar for convening a special general meeting for considering such no confidence motion.

(3) The Registrar shall, within seven days from the date of receipt of such representation, convene a special general meeting giving atleast 14 days notice to all the representatives of the society alongwith agenda to be discussed.

(4) The meeting shall be presided over by the Registrar or any officer subordinate to him who is authorized by him in this behalf. The Registrar or such officer shall, when presiding over the meeting, have the same powers as the President or Chairman when presiding over a special general meeting has, but shall not have the right to vote.

(5) The meeting called under this section shall not for any reason, be adjourned.

(6) Voting at the meeting shall be by raising of hands. The names of the representative members voting for, and against the motion, shall be read in the meeting and recorded in the minute book of the special meeting:

Provided that if one-third of the representative members present so demand, the voting shall be by secret ballot.

(7) If the motion of no confidence is rejected, no fresh motion of no confidence shall be brought before the General Body within a period of six months from the date on which the motion is rejected.”.

12. *Insertion of new section 59A.—* After section 59 of the principal Act, following section shall be inserted, namely:-

“59 A Motion of no confidence against officers of societies.— (1) A President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or Director or any other officer, by whatever designation called, who holds office by virtue of his election to that office shall cease to be such President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or Director or any other officer, as the case may be, if a motion of no confidence is passed at a special meeting of the board of directors/committee of management of society by a simple majority of the total number of the members of board of directors/committee who are for the time being entitled to attend and vote at any meeting of the board of directors/committee and the office of such President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or Director or any other officer, as the case may be, shall thereupon be deemed to be vacant.

(2) The requisition for convening special meeting of the board of directors/committee for considering such motion of no confidence shall be signed by not less than one-third of the total number of members of the board of directors/committee who are for the time being entitled to attend and vote at any meeting of the board of directors/committee and shall be delivered to the Registrar:

Provided that no such requisition for a special meeting shall be made within a period of six months from the date on which any person/officer referred to in sub-section (1) has entered upon his office.

(3) The Registrar shall, within seven days from the date of receipt of requisition under sub-section (2), convene a special meeting of the board of directors/committee which shall be held not later than fifteen days from the date of issue of the notice of such meeting.

(4) The special meeting called under sub-section (3) shall be presided over by the Registrar or any person authorized by him in this behalf. The Registrar or such person shall, when presiding over the meeting of the board of directors/committee, have the same powers as the President or Chairman when presiding over

a board of directors'/committee's meeting has, but shall not have the right to vote.

(5) The meeting called under this section shall not be adjourned for any reason.

(6) Voting at the meeting shall be by raising of hands. The names of the directors/members of the committee voting for, and against the motion, shall be read in the meeting and recorded in the minute book of the special meeting of the board of directors/committee:

Provided that if one-third of the directors/ members of the committee present so demand, the voting shall be by secret ballot.

(7) If the motion of no confidence is rejected, no fresh motion of no confidence shall be brought before the board of directors/committee within a period of six months from the date on which the motion is rejected.”.

13. *Insertion of new section 67A.*— After section 67 of the principal Act, the following section shall be inserted, namely:—

“67A. *Appointment of Directors, New Board of Directors or Administrator.*— (1) Where the Registrar is satisfied that,—

- (a) at the first constitution of the Board of Directors of any society there is a failure to elect all or any of the members of the Board of Directors;
- (b) the term of the Board of Directors of any society or of any of its members has expired or for any other reason election is held and there is a failure to elect all or any of the Directors required to fill the vacancies;
- (c) any Director is prevented from entering upon his office;
- (d) new Directors have failed to enter upon office on the date on which the term of office of the existing Board of Directors expired; or
- (e) a new Board of Directors cannot, for any reason, be constituted before the expiry of the term of Office of the existing Board of Directors,

he may, either suo motu or on an application of any officer of the society, by order, appoint,—

- (i) any member or members of the society to be the member or members of the Board of Directors to fill the vacancy/vacancies; or
- (ii) a committee, consisting of not more than three members of the society, or one or more administrators, other than the member/s of the society, to manage the affairs of the society till the new Board of Directors enters upon office:

Provided that before making such order, the Registrar shall publish a notice on the notice board at the head office of the society, inviting objections and suggestions with respect to the proposed order within a period specified in the notice and consider all objections and suggestions received by him within that period:

Provided further that it shall not be necessary to publish such notice in case where the Registrar is satisfied that immediate action is required to be taken or that it is not reasonably practicable to publish such notice.

(2) The Board of Directors or administrator so appointed shall be subject to the control of the Registrar and obey such instructions as the Registrar may, from time to time give, and shall have power to discharge all or any of the functions of the Board of Directors or of a director, as the case may be, and take all such actions as may be required to be taken in the interest of the society.

(3) The Board of Directors or administrator so appointed shall make necessary arrangements to constitute a new Board of Directors for enabling the new Board of Directors to enter upon office or to fill the vacancy/vacancies of the Directors, as the case may be, within such period or extended period as the Registrar may specify”.

14. *Insertion of new section 68A.*— After section 68 of the principal Act, the following section shall be inserted, namely:—

“68A. *Power to seize the records, etc.*— (1) Where the Registrar is satisfied that the books and records of a society are likely to be suppressed, tampered with or destroyed, or

the funds and property of a society are likely to be misappropriated or misapplied, the Registrar or the person authorized by him in this behalf, may apply to the Executive Magistrate within whose jurisdiction the society is functioning for seizing and taking possession of the records and property of the society.

(2) On receipt of an application under sub-section (1), the Executive Magistrate may authorize any police officer, not below the rank of a sub-inspector, to enter and search any place where the records and property are kept or likely to be kept, and to seize them and hand over possession thereof to the Registrar or the person authorized by him, as the case may be.”.

15. *Amendment of section 69.*— In section 69 of the principal Act, for clause (c), the following clause shall be substituted, namely:—

- “(c) The representative group shall be formed in such a manner that the number of representatives elected shall not be,—
- (i) less than fifty and shall not exceed sixty five, in case of society having membership up to 30,000;
 - (ii) less than sixty six and shall not exceed eighty in case of society having membership above 30000 but below 60001;
 - (iii) less than eighty one and shall not exceed one hundred, in case of society having membership of 60001 and above.

16. *Amendment of section 71.*— In section 71 of the principal Act, in sub-section (1), for clause (a), the following clause shall be substituted, namely:—

“(a) If the Board of Directors of any society makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interest of the society or has ceased to discharge its functions and the business of the society has or is likely to come to a standstill, or have incurred disqualification under section 61 of this Act, or serious financial irregularities have been disclosed by the auditor during inspection, the Registrar may, suo-motu or at the request of hundred members or 10% of the total number of

members of the society, whichever is less, by an Order, remove the Board of Directors and appoint an Administrator or a Board of Administrators consisting of not more than three persons, who may or may not be the members of the society to manage the affairs of the society for a period not exceeding six months, which period, at the discretion of the Registrar, may be extended by a further period not exceeding three months so however that the total period shall not exceed nine months in the aggregate subject to the provisions of sub-section (6)”.

17. *Amendment of heading.*— In Chapter VIII of the principal Act, for the heading “Accounts, Audit and Inquiry”, the heading “Accounts, Audit, Inquiry and Inspection” shall be substituted.

18. *Amendment of section 73.*— In section 73 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Every society, immediately after close of the financial year, shall prepare the Receipt and Payment statements/Trial Balance/Trading/Manufacturing Accounts, Profit and Loss Account/Income and Expenditure Account and Balance Sheet and shall submit the same to the Registrar, within a period of 45 days prior to filing the returns as specified under section 81”.

19. *Amendment of section 74.*— In section 74 of the principal Act,—

(i) in sub-section (2), the following proviso and *Explanation* shall be inserted, namely:—

“Provided that any society which is not notified under sub-section (2) may request in writing to the Registrar that its audit shall be conducted by the departmental auditors and the Registrar may allow to do so for such period as may be requested by the society.

“*Explanation.*— For the purpose of this sub-section any society or class of societies irrespective of share capital limit which are either been assisted by the Government in the form of subsidy, loan, trade and commercial concession, price support and/or offered any type of incentives, relaxation, considering the social, circumstantial aspects and in the interest of particular occupation, community or public

interest at large, and involving the deposit of the public, the Registrar shall decide over the nature as to whether such society is to be notified or otherwise and accordingly the audit of such society or class of societies shall be entrusted to the departmental auditors or the penal of auditors, by general or special order. The decision of the Registrar in this matter shall be final”.

(ii) after sub-section (6), the following sub-section shall be inserted, namely:-

“(7) If the Registrar finds it necessary or expedient to re-audit any or all accounts of the society, he may, by Order, direct such re-audit and the provisions of this Act, applicable to audit of accounts of society, shall apply to such re-audit”.

20. *Amendment of section 75.*— In section 75 of the principal Act,—

(i) for sub-section (4), the following sub-section shall be substituted, namely:-

“(4) The auditor of the society shall submit a copy of the audit report together with the accounts to the Registrar in such form as may be specified by the Registrar, within thirty days from the date of the audit.”.

(ii) after sub-section (4), the following sub-sections shall be inserted, namely:-

“(5) On completion of the statutory audit, the auditor shall award audit classification to the society whose accounts he has audited in accordance with the instructions issued by the Registrar from time to time.

(6) The Registrar or the person authorized by him to conduct the audit may summon any person in possession or responsible for the custody of any such books, accounts, papers, documents to produce the same at any place at the Headquarters of the society or any branch thereof.”

21. *Insertion of new section 76A.*— After section 76 of the principal Act, the following new section 76A shall be inserted, namely:-

“76A. *Enquiry and/or Inspection of societies.*— (1) The Registrar may, on the request made by a creditor or federal Institution or not less than one third of the total number of members of the board of

directors or not less than one fifth of the total number of members, of a society, undertake inspection of a society and authorize any Person, by order in writing, to make an inspection and inquiry into the constitution, working and financial condition of such society and submit a report thereon.

(2) Where a complaint is made by a member of society in writing about the affairs of a society or board of directors, the Registrar or any person authorized by him in this regard who shall be not below the rank of Deputy Registrar is prima facie satisfied, after affording an opportunity of being heard, that an inquiry is required to be instituted, he may, order an inquiry to be made by a person not below the rank of Co-operative Officer or special auditor.

(3) For the purpose of inspection/inquiry under sub-sections (1) and (2), the person conducting inspection or inquiry shall, at all times, have access to all books of accounts, papers, vouchers, securities, stock and other documents of that society and may, in the event of serious irregularities discovered during inquiry and inspection, take the same into custody and report to the Registrar. He shall have power to verify the cash balance of the society. The Registrar may call a meeting of the board of directors or a general body meeting of the society, as he may deem fit.

(4) Every officer or member of board of directors shall furnish such information with regard to working of the society as the Registrar or the person making inquiry or inspection may require.

(5) A copy of the report of the inquiry and/or inspection carried out under this section shall be forwarded to the society within a period of ninety days from the date of completion of such inquiry and/or inspection.”.

22. *Amendment of section 82.*— In section 82 of the principal Act,—

(i) in the heading, for the words “Co-operative Authority”, the word; “Registrar” shall be substituted;

(ii) in sub-section (1),—

(a) after the words “Chairman of the

society,” the figure and word “Registrar” shall be deleted.

(b) for the words “*Co-operative Authority*” and in any other sections, except section 121 wherever they occur, the word “Registrar” shall be substituted;

(iii) in sub-section (4), the expression “or as the case may be, the Registrar,” shall be omitted.

23. *Substitution of CHAPTER-IX.*— For CHAPTER-IX of the principal Act, the following Chapter shall be substituted, namely:—

“CHAPTER - IX

Disputes and Arbitration

83. *Dispute.*— (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the office bearers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, as the case may be, to the Registrar, if both the parties thereto are one or other of the following:—

(a) a society, its Board, any past Board, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society;

(c) a person, other than a member of the society, who has been granted a loan by the society, or with whom the society has or had transactions and any person claiming through such a person;

(d) a surety of a member, past member, or a deceased member, or a person other than a member who has been granted a loan by the society whether such a surety is or is not a member of the society;

(e) any other society, or the Liquidator of such a society.

(2) When any question arises whether for the purposes of the foregoing sub-section a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final.

(3) Save as otherwise provided under sub-section (3) of section 86, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Explanation 1.— A dispute between the Liquidator of a society and the members of the same society shall not be referred to the Registrar under the provisions of sub-section (1).

Explanation 2.—For the purpose of this section, a dispute shall include,—

(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member or servant or employee whether such a debt or demand be admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan of a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant or deceased servant, or by its board of directors, past or present, whether such loss be admitted or not;

(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of deceased member to deliver possession to a society of land or any other asset resumed by it for breach of conditions of the assignment.

84. *Powers of an apex co-operative bank to proceed against members of a society for recovery of moneys due to it from such society.*—

(1) If any society is unable to pay its debts to a Central Bank by reasons of any of its members

committing default in the payment of the moneys due by them to the society, the apex co-operative bank may direct such society to refer to the Registrar under section 83, the dispute between the society and defaulting members thereof:

Provided that if such society fails to refer the dispute as aforesaid within a period of ninety days from the date of receipt of such direction, the apex co-operative bank itself may refer to the Registrar the said dispute:

Provided further that, in case of a reference, the bye laws of the defaulting society shall apply as if all references to the society or its board of directors in the said bye-laws were references to the apex co-operative bank.

(2) Where a apex co-operative bank has obtained a decree or award against any society in respect of the moneys due to it by such society, the apex co-operative bank may proceed to recover such moneys firstly from the assets of that society and secondly from the members of that society to the extent of the moneys due by them to that society.

85. *Limitation.*— (1) Notwithstanding anything contained in the Limitation Act, 1963 contract (Act 36 of 1963) but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the Registrar under the last preceding section shall,—

(a) when the dispute relates to the recovery of any sum, including interest thereon, due to a society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society;

(b) when the dispute is between a society or its board of directors, and any past board of directors, any past or present officer, or past or present agent, or past or present servant or the nominee, heir or legal representative of a deceased officer, deceased agent or deceased servant of the society or a member, or past member or the nominee, heir or legal representative of a deceased member, and when the dispute relates to any act or omission on the part of the either party to the dispute, be six years from the date on which the act or omission with reference to which the dispute arose, took place;

(c) when the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be wound up under section 92, or in respect of which a nominated board of directors or an administrator has been appointed under section 71, be six years from the date of the order issued under section 92, or section 71, as the case may be;

(d) when the dispute is in respect of an election of an office-bearer of the society, be one month from the date of the declaration of the result of the election.

(2) The period of limitation in the case of any other dispute except those mentioned in the foregoing sub-section which are required to be referred to the Registrar under the last preceding section shall be regulated by the provisions of the Limitation Act, 1963 (Central Act 36 of 1963) as if the dispute is a suit and the Registrar a Civil Court.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Registrar may admit a dispute after the expiry of the limitation period, if the applicant satisfies the Registrar that he has sufficient cause for not referring the dispute within such period and the dispute so admitted shall be dispute which shall not be barred on the ground that the period of limitation had expired.

86. *Settlement of disputes.*— (1) If the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of section 83, the Registrar shall, subject to the rules, decide the dispute himself or refer it for disposal to a nominee, or a board of nominees, appointed by the Registrar.

(2) Where any dispute is referred under the foregoing sub-section for decision to the Registrar's nominee or board of nominees, the Registrar may, at any time, for reasons to be recorded in writing, withdraw such dispute from his nominee or board of nominees, and may decide the dispute himself, or refer it again, for decision to any other nominee, or board of nominees, appointed by him.

(3) Notwithstanding anything contained in section 83, the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute, if the question at issue between a society and a claimant or between different claimants, is one

involving complicated questions of law and fact, until the question has been tried by a regular suit instituted by one of the parties or by the society. If any such suit is not instituted within two months from the date of the Registrar's order suspending proceedings, the Registrar shall take action as is provided in sub-section (1).

87. Procedure for settlement of disputes and power of Registrar, his nominee or board of nominees.— (1) The Registrar, or his nominee or board of nominees, hearing a dispute under the last preceding section shall hear the dispute in the manner prescribed, and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and to compel them to give evidence on oath, affirmation or affidavit, the production of documents by the same means and as far as possible in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908 (5 of 1908).

(2) Except with the permission of the Registrar or his nominee or board of nominees, as the case may be, no party shall be represented at the hearing of a dispute by a legal practitioner.

(3) (a) If the Registrar or his nominee or board of nominees is satisfied that a person, whether he be a member of the society or not, has acquired any interest in the property of a person who is party to a dispute, he may order that the person who has acquired the interest in the property may join as a party to the dispute, and any decision that may be passed on the reference by the Registrar or his nominee or board of nominees shall be binding on the party so joined, in the same manner as if he was an original party to the dispute.

(b) Where a dispute has been instituted in the name of the wrong person or where all the defendants have not been included, the Registrar or his nominee or board of nominees may, at any stage of the hearing of the dispute, if satisfied that the mistake was bonafide, order any other person to be substituted or added as a plaintiff or a defendant, upon such terms as he thinks just.

(c) The Registrar, his nominee or board of nominees may, at any stage of the proceeding, either upon or without the application of either party, and upon such terms as may appear to the Registrar, his nominee or board of nominees, as

the case may be, to be just, order that the name of any party improperly joined whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined whether as plaintiff or defendant or whose presence before the Registrar, his nominee or board of nominees, as the case may be, may be necessary in order to enable the Registrar, his nominee or board of nominees effectually and completely to adjudicate upon and settle all the questions involved in the dispute, be added.

(d) Any person who is a party to the dispute and entitled to more than one relief in respect of the same cause of action may claim for all or any of such reliefs, but if he omits to claim for all such reliefs, he shall not forward a claim for any relief so omitted, except with the leave of the Registrar, his nominee or board of nominees, as the case may be.

88. Attachment before award and interlocutory orders.— (1) Where a dispute has been referred to the Registrar or his nominee or board of nominees under section 86, or under section 95, the Registrar or his nominee or board of nominees, if satisfied on enquiry or otherwise that party to such dispute with intent to defeat, delay or obstruct the execution of any award or carrying out of any order that may be made,—

(a) is about to dispose of whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the jurisdiction of the Registrar, may, unless adequate security is furnished, direct conditional attachment of the said property, and such attachment shall have the same effect as if made by a competent Civil Court.

(2) Where the Registrar, his nominee or board of nominees direct attachment of property under the foregoing sub-section, he shall issue a notice calling upon the person whose property is so attached to furnish security which he thinks adequate within a specified period and if the person fails to provide the security so demanded, the Registrar or his nominee or board of nominees may confirm the order and, after the decision in the dispute or the completion of the proceedings referred to in the foregoing sub-section, may direct the disposal of the property so attached towards the claim if awarded.

(3) Attachment made under this section shall not affect the rights, subsisting prior to the attachment of the property, of person not party to the proceedings in connection with which the attachment is made, or bar any person holding a decree against the person whose property is so attached from applying for the sale of the property under attachment in execution of such decree.

(4) The Registrar, his nominee or board of nominees, as the case may be, may, in order to prevent the ends of justice being defeated, make such interlocutory orders pending the decision in a dispute referred to in sub-section (1) as may appear to be just and convenient.

89. *Decision of Registrar or his nominee or board of nominees.*— When a dispute is referred to arbitration, the Registrar or his nominee or board of nominees may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, and the fees and expenses payable to the Registrar or his nominee or, as the case may be, board of nominees. Such an award shall not be invalid merely on the ground that it was made after the expiry of the period fixed for deciding the dispute by the Registrar, and shall, subject to appeal or review or revision, be binding on the parties to the dispute.

90. *Appeal against decision of Registrar or his nominee or board of nominees.*— Any party aggrieved by any decision of the Registrar or his nominee or board of nominees under the last preceding section, or an order passed under section 88 may, within two months from the date of the decision or order, appeal to the Tribunal.

91. *Money how recovered.*— Every order passed by the Registrar or his nominee or board of nominees under section 88 or 89 every order passed in appeal under the last preceding section, every order passed by a liquidator under section 95, every order passed by the State Government in appeal against orders passed under section 105 shall if not carried out,—

(a) on a certificate signed by the Registrar or a Liquidator, be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court; or

(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue:

Provided that, any application for the recovery in such manner of any such sum shall be made to the Collector, and shall be accompanied by a certificate signed by the Registrar, or by any Assistant Registrar as duly authorized by the Registrar in this behalf. Such application shall be made within twelve years from the date fixed in the order and if no such date is fixed, from the date of the order.

91 A. *Private transfer of property made after issue of Certificate void against society.*— Any private transfer or delivery of, or encumbrance or charge on, property, made or created after the issue of certificate of the Registrar, Liquidator, or Assistant Registrar, as the case may be, under section 91 shall be null and void as against the society on whose application the said certificate was issued.

91 B. *Transfer of property which cannot be sold.*— (1) When in any execution of an order sought to be executed under section 91, any property cannot be sold for want of buyers, if such property is in occupancy of the defaulter, or of some person in his behalf, or of some person claiming under a title created by the defaulter, subsequently to the issue of the certificate of the Registrar, Liquidator or the Assistant Registrar, under clause (a) or (b) of section 91, the Court or the Collector or the Registrar, as the case may be, may, notwithstanding anything contained in any law for the time being in force, direct that the said property or any portion thereof, shall be transferred to the society which has applied for the execution of the said order, in the manner prescribed.

(2) Where property is transferred to the society under the foregoing sub-section, or where property is sold under section 91, the Court, the Collector or the Registrar, as the case may be, may, in accordance with rules, place the society or the purchaser, as the case may be, in possession of the property transferred or sold.

(3) Subject to such rules as may be made in this behalf, and to any rights, encumbrances, charges or equities lawfully subsisting in favour of any person, such property or portion thereof shall be held under sub-section (1) by the said society on such terms and conditions as may be

agreed upon between the Court, the Collector or the Registrar, as the case may be, and the said society subject to the general or special orders of the State Government, the Collector or the Registrar may delegate to an officer, not below the rank of the Deputy Collector or the Assistant Registrar, power exercisable by the Collector or the Registrar under this section.

91C. *Recovery of any sum advanced by a resource society.*— (1) Notwithstanding anything contained in sections 83, 86 and 91, on an application made by a resource society for the recovery of arrears of any sum advanced by it to any of its members and on its furnishing statement of accounts in respect of such arrears, the Registrar may after making such inquiries as he may deem fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(2) Where the Registrar is satisfied that a resource society has failed to take action under the foregoing sub-section in respect of arrears of any sum advanced by it to any of its members, the Registrar may on his own motion, after making such inquiries as he may deem fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(3) A certificate granted by the Registrar under sub-section (1) or sub-section (2) shall be final and conclusive proof of the arrears stated to be due therein and the same shall be recoverable according to the law for the time being in force for the recovery of arrears of land revenue.

91D. *Registrar's powers to recover certain sums by attachment and sale of property.*— (1) The Registrar or any officer subordinate to him or an officer of a Federal Institution duly empowered by him in this behalf, may subject to such rules as may be made by the State Government, but without prejudice to any other mode of recovery provided by or under this Act, recover,—

(a) any amount due under a decree or order of Civil Court obtained by a society;

(b) any amount due under a decision, award or order of the Registrar, arbitrator or Liquidator or Tribunal;

(c) any sum awarded by way of costs under this Act;

(d) any sum ordered to be paid under this Act as a contribution to the assets of the society together with interest, if any due on such amount or sum and costs of process by the attachment and sale or by sale without attachment of the property of the person against whom such decree, decision, award or order has been obtained or passed.

(2) The Registrar or the officer empowered by him shall be deemed, when exercising the powers under the foregoing sub-section or when passing any orders on any application made to him for such recovery, to be a Civil Court for the purpose of article 136 of the Schedule to the Limitation Act, 1963 (Central Act 36 of 1963).

24. *Amendment of section 92B.*— Existing provisions of section 92B shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:—

“(2) Notwithstanding anything contained in this Act, in the case of an insured co-operative bank,—

(i) an order for the winding up, or an order sanctioning a scheme of compromise or arrangement, or of amalgamation, or reconstruction (including division or re-organisation), of the bank may be made only with the previous sanction in writing of the Reserve Bank of India;

(ii) if so required by the Reserve Bank of India in the public interest or for preventing the affairs of the bank from being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an order shall be made for the supersession (removal) of the committee of management of society and the appointment of an Administrator therefor for such period or periods, not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank of India, and the Administrator so appointed shall, after the expiry of his term of office, continue in office until the day immediately preceding the date of the first meeting of the new committee of management of society.

(3) An order for the winding up of the bank or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction

(including division or re-organisation) or an order for the supersession (removal) of the committee of management of society and the appointment of an Administrator therefor made with the previous sanction in writing or on the requisition of the Reserve Bank of India shall not be liable to be called in question in any manner and the liquidator or the insured co-operative bank or the transferee bank, as the case may be, shall be under an obligation to repay the Deposit Insurance Corporation established under the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (Central Act 47 of 1961), in the circumstances, to the extent and in the manner referred to in section 21 of that Act.

Explanation:—

(a) the expression “an insured Co-operative bank” means a society which is an insured bank under the provisions of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (Central Act 47 of 1961);

(b) the expression “the transferee bank” has the same meaning as assigned to it in that Act.”

25. *Amendment of section 114.*— In section 114 of the principal Act,—

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The Co-operative Tribunal shall consist of three members to be appointed by the Government, one among whom shall be appointed as the President”.

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3)(a) the President of the Co-operative Tribunal shall be a person who is qualified to be appointed as a District Judge or is or has been a Judicial Officer for a period of seven years or has held the post of the President of the Goa, Daman and Diu Co-operative Tribunal for a period of five years or is holding or has held the post of Registrar of Co-operative Societies for a period not less than three years or has been a Secretary to the Government of Goa.

(b) Two other members of the Co-operative Tribunal shall be persons of ability, integrity and standing, and having adequate educational

qualifications, knowledge, experience of at least five years in dealing with problems relating to Co-operatives and/or persons having served in the Co-operative Department for a minimum period of twenty years and holding or held the post atleast in Group ‘A’ Junior grade in Goa Civil Service for minimum period of five years.

(iii) in sub-section (4), for the words “President of the Administrative Tribunal”, the words “President or Additional President of the Administrative Tribunal” shall be substituted.

26. *Amendment of section 121.*— In section 121 of the principal Act,—

(a) in the heading, the words “Co-operative Authority and” of shall be omitted.

(b) in sub-section (1),—

(i) in clauses (a), (b), (c) and (d), the words “a Co-operative authority or”, wherever they occur shall be deleted.

(ii) in sub-sections (2), (3) and (4), the words “a Co-operative authority or”, wherever they occur, shall be omitted;

(iii) in sub-section (3), the words “authority or” shall be omitted;

(iv) in sub-section (4), the words “Authority or” shall be omitted and for the words “said authorities, wherever they occur, the words “said Tribunal” shall be substituted”.

(v) sub-section (6) shall be omitted;

27. *Insertion of new section 123A.*— After section 123 of the principal Act, the following section shall be inserted, namely:—

“123 A. *Handing over records and property to new Chairman on election.*— (1) On the election of a new Board of Directors and its Chairman, the retiring Chairman in whose place the new Chairman is elected, shall hand over charge of the office and all papers and property, if any, of the society in his possession or any officer thereof, to the new Chairman of the Board of Directors.

(2) If the retiring Chairman fails or refuses to hand over charge, or to hand over the papers and property of the society as aforesaid, the Registrar, or any person authorised by him in

this behalf, may, by order in writing, direct him to forthwith handover such charge and property.

(3) If the retiring Chairman to whom a direction has been issued as aforesaid does not comply with such direction, he shall, on conviction, be punished with simple imprisonment which may extend to one month, or with fine which may extend to five thousand rupees, or with both and the Registrar may, on the retiring Chairman's failure to comply with such direction, take may order for seizing the records and property and handing it over to the new Chairman."

28. *Insertion of new section 126A.*— After section 126 of the principal Act, the following new section 126 A shall be inserted, namely:—

"126A. *Power to exempt societies from provisions of this Act.*—The Government may, by general or special order, to be published in the Official Gazette, exempt any society or class of societies from any of the provisions of this Act, or may direct that such provision shall apply to such society or class of societies with such modifications not affecting the substance thereof as may be specified in the order:

Provided that no order to the prejudice of any society shall be passed, without an opportunity being given to such society to present its case."

29. *Amendment of section 127.*— In section 127 of the principal Act,— in sub-section (2),—

(a) clauses (xxxv), (xxxvi), and (xxxvii) shall be omitted;

(b) in clause (xiii), the expression "the Co-operative authority," shall be omitted.

30. *Insertion of new sections 130 and 131.*— After section 129 of the principal Act, the following sections shall be inserted, namely:—

"130. *Delegation of powers of Registrar to the Federal Institution.*— The State Government may, by notification in the Official Gazette, and subject to such conditions as it may think fit to impose, delegate all or any of the powers of the Registrar under this Act to any Federal Institution or to an officer of the said Institution thereof and such Federal Institution and/or officer, as the case may be, shall work under the general guidance, superintendence and control of the Registrar as specified in the notification.

131. *The provisions of this Act to override the bye-laws of the society.*— The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any bye-laws adopted by any society."

Statement of Objects and Reasons

During the Course of implementation of the Goa Co-operative Societies Act, 2001 (Goa Act 36 of 2001), numerous difficulties have cropped up which has affected the functioning of the co-operative institutions in this State. The Bill seeks to amend the said Act so as to make provisions for effective guidance, protection from degeneration, streamlining the litigation and recovery process and to allow democratic means for the management of the society, etc. The Bill also seeks to provide orderly development of the co-operative movement in the State of Goa.

This Bill seeks to achieve the above objects.

Financial Memorandum

No financial implications are involved in this Bill.

Memorandum Regarding Delegated Legislation

Clause 1 (2) of the Bill empowers to Government to appoint a date by notification in the Official Gazette for bringing into force the Act.

Clause 3 of the Bill empowers the Government to frame rules specifying the manner in which the property to be transferred to the society and held by the society.

Clause 10 of the Bill empowers the Government to frame rules in respect of bonus shares to be issued.

Clause 23 of the Bill empowers the Government to frame rules specifying the manner in which the dispute to be held.

Clause 30 of the Bill empowers the Government to issue notification in the Official Gazette for delegating powers of the Registrar to any Federal Institution.

This delegation is of normal character.

Porvorim, Goa,
19th August, 2008.

Assembly Hall,
Porvorim, Goa.

RAVI S. NAIK
Hon'ble Minister for
Co-operation

R. KOTHANDARAMAN
Secretary to the Legislative
Assembly of Goa.

ANNEXURE

Extracts of Section 2 (16), 2(30A), 15(4A), 20(6), 21(3), 23(A), 25(2), 25(3), 28(1), 50, 52, 52(g), 58A, 58B, 59 (A), 67(A), 68(A), 69(c), 71(1), heading under CHAPTER VIII, 73(4), 74(2), 74(7), 75(4), 75(5), 75(6), 76(A), 82(1), 82(4), CHAPTER IX 83, 84, 85, 86, 87, 88, 89, 90, 91A, 91B, 91C, & 91D, 92B, 114 (2), 114(3), 121(1), 123(A), 126A, 127, 130 and 131 of Goa Co-operative Societies Act, 2001 as amended on 26/01/2008.

2. *Definitions.*— In this Act, unless the context otherwise requires,—

(16) “co-operative authority” means the authority constituted under section 84 of this Act to decide disputes referred to it under any of the provisions of this Act;

(30) “mutually aided society” means a society which does not have any share capital, loans or any financial assistance from the State or the Central Government except with a Memorandum of Understanding with the Government;

(31) “officer” means a person elected or appointed to any office of a society according to its bye-laws; and includes a chairman, vice-chairman, president, secretary, treasurer, member of the board of directors, managing director, chief executive, manager and any other person elected or appointed under this Act, the rules or the bye-laws, to give directions in regard to the business of such society;

15. *Amalgamation, transfer, division or conversion of societies.*— (1) A society may, by a resolution passed by two-third majority of the members present and voting at a special general meeting held for the purpose, decide—

(4) Notwithstanding anything contained in the Transfer of Property Act, 1882 (IV of 1882) or the Registration Act, 1908 (XVI of 1908), in the event of division or conversion, the registration of the new societies or, as the case may be, of the converted society and in the event of amalgamation, the resolution of the societies concerned with the amalgamation, shall in each case, be sufficient conveyance to vest the assets and liabilities of the original society or amalgamating societies in the new societies or converted or amalgamated society, as the case may be.

20. *De-registration of societies.*— (5) The powers of the Registrar under sub-sections (1) and (2) shall not be exercised by any person or persons on whom all or any of the powers of the Registrar are conferred under section 4.

21(3). Admission of members may be made only by an elected board of directors or by the general body where such a board does not exist:

Provided that in the case of Coop. Banks and Coop. Credit Societies, an Administrator appointed under section 71 may admit members only for the purpose of sanction of loans.

23-A New insertion.

25. *Removal of member.*— A society may, by a resolution passed in a general meeting held for the purpose, remove a member on the ground that,—

(2) he has not used for two consecutive years the service of society to a minimum level as specified in the bye-laws;

(3) he has not attended three consecutive annual general meetings of the society;

(4) he is in default regarding any payment to be made to the society exceeding an amount and for the period as specified in the bye-laws:

Provided that no such resolution shall be valid unless the member concerned is given an opportunity of representing his case to the general body.

28. *Voting powers of members.*— (1) Save as otherwise provided herein and in sub-sections (2) to (7), no member of any society shall have more than one vote in its affairs and every right to vote shall be exercised personally and not by proxy:

Provided that a member who is in the employment of the Defence Services shall be entitled to vote by proxy through any other member of the society if he is unable to exercise his right of vote personally:

Provided further that in the case of an equality of votes, the Chairman shall have a casting vote.

CHAPTER - VI

Property and Funds of Societies

50. *Mobilisation of Funds.*— A society may mobilise funds in the form of share capital, deposits, debentures, loans and other contributions from its members to such extent and under such conditions as may be specified in the bye-laws.

52. *Disposal of net surplus.*— The society shall prepare its Annual Financial Statement and arrive at its surplus or deficit. The society shall, out of its net surplus arising from its business in any year, make deferred payment to its members as patronage refund in proportion to the contribution of the members to such business an amount not less than 20% and not exceeding 50% of such surplus. The balance of net surplus shall be appropriated in the following manner:—

New insertion of Ist proviso to section 52(g)

New insertion of IInd proviso to section 52(g)

CHAPTER - VII

Management of Societies

58 A New insertion

58 B New insertion

59 A New insertion

67-A New insertion

68-A New insertion

69. *Representative general body.*— A society having more than five thousand individual members shall have a representative general body constituted in the following manner:-

(c) Representative group shall be formed in such a manner that the number of representatives elected shall not be less than fifty and shall not be more than five hundred depending upon the total membership of the society.

71. *Removal of directors and appointment of Administrator.*— (1) (a) If the Board of directors of any society makes default or is negligent in the performance of the duties imposed on it by this Act, or the rules or the bye-laws or commits any Act which is prejudicial to the interest of the society or has ceased to discharge its functions and the business of the society has or is likely to come to a standstill, then the Registrar, at the request of hundred members or 10% of the total number of members of the society, whichever is less, may by an Order, remove the board of directors and appoint a board of administrators consisting of not more than three persons, who may or may not be members of the society to manage the affairs of the society for a period not exceeding six months, which period, at the discretion of the Registrar, may be extended by a further period not exceeding three months, so however that the total period shall not exceed nine months in the aggregate subject to the provisions of sub-section (6).

CHAPTER - VIII

Accounts, Audit and Inquiry

73. *Accounts and records.*— (3) The books of accounts of every society, together with supporting records and vouchers, shall be preserved for such period as may be prescribed subject to any other laws for the time being in force.

74- (2) The Registrar shall appoint auditors to audit the accounts of State aided societies, and other societies with paid up capital exceeding Rupees one lakh as may be notified by the Registrar from time to time, from among the departmental auditors or the panel of auditors.

74. (6) Where a mutually aided society fails to get its accounts audited within nine months from the end of the co-operative year, the Registrar shall be empowered to appoint the auditor and get the accounts audited.

75. *Powers and duties of the auditor.*— (4) The auditor of the society shall submit a copy of the audit report together with the accounts to the Registrar within thirty days from the date of the report.

76 A New insertion

82. *Power of the Co-operative Authority to order recovery of losses.* — (1) A member, director, chairman of the society, Registrar or any officer authorized by the Registrar may, file a copy of the report of the auditor or the special auditor or the inquiry officer, before the Co-operative Authority with an application for necessary action against the person on account of whose conduct the society has incurred loss. The Co-operative Authority may, on the basis of such report, disallow every item of the expenditure incurred contrary to law and order recovery of the same from the person incurring or authorizing the incurring of such expenditure, or held responsible in the said report for any deficiency, loss or unprofitable outlay occasioned by his negligence or misconduct of any such amount which or to have been accounted but is not brought into account by that person and shall, in every such case, specify the amount liable to be paid by such person to the society.

(4) Where an appeal is filled in the Co-operative Tribunal under sub-section (3), the persons who filed the application before the Co-operative Authority or, as the case may be the Registrar, or his representative shall be the sole respondent thereto, and the applicant shall not make any other person a party to the proceedings.

CHAPTER - IX

Disputes and Co-operative Authorities

83. *Settlement of disputes.*— Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the board of directors or its office bearers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, to a Co-operative authority, if both the parties thereto are one or other of the following:-

(a) a society, its board of directors, any past board of directors, any past or present director, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased director;

(b) a member, past member or a person claiming through a member, past member or a deceased

member of a society, or a society which is a member of the society or a person who claims to be a member of the society;

(c) a surety of a member, past member or deceased member, whether such surety or person is or is not a member of the society;

(d) any other society, or the liquidator of such a society:

Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), shall not be deemed to be a dispute for the purposes of this section.

Explanation.— For the purposes of this section, a dispute shall include—

(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant or employee, whether such debt or demand be admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any director, past director or deceased director, by any agent, past agent or servant, or by its board of directors, past or present, whether such loss be admitted or not;

(iv) a refusal or failure by a members or nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of condition of the assignment

84. Constitution of Co-operative Authority.— (1) The Government may appoint one or more persons to be a co-operative authority for the adjudication of disputes referred to the co-operative authority under section 83 or other provisions of this Act.

(2) The qualifications for appointment as a Co-operative authority, shall be such as may be prescribed.

(3) A Co-operative authority shall have jurisdiction over such societies or over such matters contained in this Act as may be specified by the Government by general or special Notification from time to time. Where more than one co-operative authorities have the same jurisdiction, the Government shall specify as to who shall distribute various works amongst such co-operative authorities,

(4) All disputes and other proceedings pending immediately before the commencement of this Act, before any nominee or board of nominees or any other person appointed by the Registrar, or before the Registrar or any person to whom the powers of the Registrar under this Act or the rules made thereunder have been delegated, shall be transferred by the Registrar, by the Registrar, by general or special order, to any Co-operative authority specified by him and shall be heard and disposed of by the authority as if they had been originally filed before it. The Co-operative authority may proceed to hear and dispose of such proceedings from the stage reached before such transfer or may commence the hearing *do novo*.

85. Limitation.— (1) Notwithstanding anything contained in the limitation Act, 1963 (XXXVI of 1963) but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the co-operative authority under the last preceding section shall—

(a) When the dispute relates to the recovery of any sum, including interest thereon due to a society by a member thereof, be six years from the date on which such sum or installment thereof payable by the member of the society concerned has fallen due;

(b) When the dispute is between a society or its board of directors, and any past board of directors, any past or present director, or past or present agent or past or present servant or the nominee, heir or legal representative of the deceased director, deceased agent or deceased servant of the society, or a member or past member or the nominee, heir or legal representative of a deceased director and when the dispute relates to any act or omission on the part of either party to the dispute, be six years from the date on which the act or omission with reference to which the dispute arose took place;

(c) When the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be wound up under section 92 be six years from the date of issue of the order;

(d) When the dispute is in respect of election of a board of directors or office bearers of the society, be two months from the date of the declaration of the result of the election.

(2) The period of limitation in the case of any other dispute except those mentioned in sub-section (1) which are required to be referred to the Co-operative authority under section 84 shall be regulated by the provisions of the Limitation Act, 1963 (XXXVI of 1963), as if the dispute were a suit and the Co-operative authority a Civil Court.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Co-operative authority may admit a dispute after the expiry of the limitation period, if the applicant satisfies the Co-operative authority that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation had expired.

(4) Notwithstanding anything contained hereinabove, the period of limitation shall be computed from the date on which this Act comes into force in respect of all disputes and causes of action arising prior to the date of coming into force of this Act.

86. *Transfer of disputes from one Co-operative authority to another.*— Where any dispute is referred to any Co-operative authority, the President of the Co-operative tribunal may, on an application made to him by any of the parties to the dispute or suo motu, for reasons to be recorded in writing, withdraw such dispute from that authority and may refer it for decision to any other Co-operative authority as he deems fit.

87. *Procedure for settlement of disputes and powers of the co-operative authority.*— (1) The Co-operative authority, hearing a dispute referred to it, shall hear the dispute in the manner prescribed, and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and to compel them to give evidence on oath, on affirmation or affidavit, and to compel the production of documents by the same means and as far as possible in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908 (V of 1908).

(2) Save as otherwise provided in this Act, or the rules made thereunder, the provisions of the Code of Civil Procedure, 1908 (V of 1908) shall be applicable in all disputes and matters referred to the Co-operative authority.

(3) Every dispute in relation to any election shall be heard and decided by the Co-operative authority as expeditiously as possible and endeavour shall be made to conclude the hearing and decision within six months from the date on which the dispute is referred to it.

(4) (a) If the Co-operative authority is satisfied that a person, whether he be a member of the society or not, has acquired any interest in the property of a person who is a party to the dispute, it property may join as a party to the dispute; and any decision that may be passed by the Co-operative authority shall be binding on the party so joined, in the same manner as if he were an original party to the dispute.

(b) Where a dispute has been instituted in the name of the wrong person, or where all the opponents have not been included, the Co-operative authority may, at any stage of the hearing of the dispute, if satisfied that the mistake was bonafide,

order any other person to be substituted or added as a disputant or an opponent, upon such terms as it thinks just.

(c) The Co-operative authority may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Co-operative authority to be just, order that the name of any party improperly joined, whether as disputant or opponent, be struck out, and that the name of any person who ought to have been joined, whether as disputant or opponent or whose presence before the Co-operative authority may be necessary in order to enable the Co-operative authority effectually and completely to adjudicate upon and settle all the questions involved in the dispute be added.

(d) Any person who is a party to the dispute and entitled to more than one relief in respect of the same cause of action may claim all or any of such reliefs; but if he omits to claim for all claim all such reliefs, he shall not forward a claim for any relief so omitted, except with the leave of the Co-operative authority.

(5) In any case in which a dispute is decided by the Co-operative authority ex-parte against any person, he may apply to the authority within thirty days from the date of the decision to set it aside and the authority, if satisfied that there was sufficient cause for his failure to appear when the dispute was called and heard, the authority shall make an order setting aside the decision as against him, upon such terms as to costs, payment to the authority or otherwise as it thinks fit.

88. *Attachment before award and interlocutory orders.*— (1) Where a dispute has been referred to the Co-operative authority under section 83 or under sub-section (1) of section 95 or in proceedings under section 82 for recovery of losses, the Co-operative authority, if satisfied on inquiry or otherwise, that a party to such dispute or against whom proceedings are pending under section 82, with intent to defeat, delay or obstruct the execution of any award or the carrying out of any order that may be made.—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the jurisdiction of the Court may, unless adequate security is furnished, direct conditional attachment of the said property, and such attachment shall have the same effect as if made by a competent Civil Court.

(2) Where attachment of property is directed under sub-section (1), the Co-operative authority shall issue a notice calling upon the person whose property is so attached to furnish security as it thinks adequate within a specified period. If the person fails to provide the

security so demanded, the Co-operative authority may confirm the order and, after the decision in the dispute or the completion of the proceedings under section 82 may direct the disposal of the property so attached towards the claim, if awarded.

(3) Attachment made under this section shall not affect the rights, subsisting prior to the attachment of the property, of persons not parties to the proceedings in connection with which the attachment is made, or bar any person holding a decree against the person whose property is so attached from applying for the sale of the property under attachment in execution of such decree.

(4) The Co-operative authority may, in order to prevent the ends of justice being defeated, make such interlocutory orders, pending the decisions in a dispute referred to in sub-section (1), as may appear to be just and convenient.

(89) *Award of Co-operative authority.*— When a dispute is referred to the co-operative authority, the authority may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, and the fees and expenses payable to the co-operative authority. Such an award shall, subject to appeal or review or revision, be binding on the parties to the disputes.

(90) *Appeal against award under section 89 and order under section 88.*— Any party aggrieved by any award of the co-operative authority under section 89 or and order passed under section 88 may, within two months from the date of the award, decision or order as the case may be, appeal to the co-operative Tribunal.

(91) *Execution of award and orders of Co-operative authority, Registrar and Liquidator.*— (1) (a) An award passed by the Co-operative authority under section 89 or order under section 88 or under any other provision of this Act may be executed by the Co-operative Authority which passed it, or by the Co-operative authority to which it is sent for execution:

(b) Provided that when such award or order provides for recovery, the same may be executed by the Co-operative authority which passed it or by any person authorised by the said Co-operative authority in writing in this behalf.

(2) An order passed by the Registrar or the liquidator may, if not complied with, be referred by the Registrar or liquidator as the case may be, to the Co-operative authority for execution and such order shall be executed as if it was an order of the Co-operative authority to which it is sent for execution.

(3) The awards and the orders referred to in sub-section (1) and (2) shall be executed in the manner

prescribed. Save as otherwise provided in the rules, the provisions of the Code of Civil Procedure, 1908 (V of 1908) shall be applicable in the manner of execution of awards and orders referred to in sub-section (1) and (2).

(entire Chapter-IX has been replaced by new Chapter-IX).

92 (b) on receipt of an application made upon a resolution carried by three-fourths of the members of a society present at a special meeting called for the purpose, or

(c) of his own motion, in the case of a society which—

(i) has not commenced working, or

(ii) has ceased working, or,

(iii) possesses shares or members' deposits not exceeding five hundred rupees, or

(iv) has ceased to comply with any conditions as to registration and management in this Act or the rules or the bye-laws, is of the opinion that a society ought to be wound up, he may issue an interim order for it to be wound up.

(2) A copy of such order made under sub-section (1) shall be communicated in the prescribed manner, to the society calling upon it to submit its explanation to the Registrar with a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society of being heard, may issue a final order, vacating or confirming the interim order. The final order shall be published in the Official Gazette.

114. *The Goa Co-operative Tribunal.* — (2) The Co-operative Tribunal shall consist of the President, who shall be a person appointed by the Government as the President of the Co-operative Tribunal.

(3) The President of the Co-operative Tribunal shall be a person who is qualified to be appointed as a District Judge or is or has been a Judicial Officer for period of seven years.

121. *Contempt of Co-operative Authority and of Co-operative Tribunal.*— (1) If any person—

(a) when ordered by a Co-operative authority or the Co-operative tribunal to produce or deliver up any document or to furnish information, being legally bound so to do, intentionally omits to do so; or

(b) when required by a Co-operative Authority or tribunal to bind himself by an oath or affirmation to state the truth, refuses to do so;

(c) being legally bound to state the truth on any subject to a Co-operative Authority or Tribunal, refuses to answer any question demanded of him

touching such subject by the Co-operative Authority or Tribunal; or

(d) intentionally offers any insult or causes any interruption to a Co-operative authority or Tribunal at any stage of its judicial proceedings, he shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) If any person refuses to sign any statement made by him when required to do so by a Co-operative authority or the Co-operative tribunal, he shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(3) If any offence under sub-sections (1) or (2) is committed in the view or presence of a Co-operative authority or Tribunal concerned, the said authority or tribunal may, after recording the facts constituting the offence and the statement of the accused as provided in the Code of Criminal Procedure, 1973 (II of 1974), forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of the accused person before such Magistrate or, if sufficient security is not given, shall forward such person in custody to such Magistrate. The Magistrate to whom any case is so forwarded shall proceed to hear the complaint against the accused person in the manner provided in the Code of Criminal Procedure, 1973 (II of 1974).

(4) If any person commits any act or publishes any writing which is calculated to improperly influence a Co-operative authority or the Co-operative tribunal to bring any such Authority or Tribunal into disrepute or contempt or to lower its or his authority, or to interfere with the lawful process of the said authorities, such person shall be deemed to be guilty of contempt of the said authorities.

(5) In the case of contempt of itself, the Co-operative Tribunal shall record the facts constituting such contempt, and make a report in that behalf to the High Court.

(6) In the case of contempt of a Co-operative authority, the Co-operative authority shall record the facts constituting such contempt, and make a report in that behalf to the Co-operative tribunal, and thereupon, the Tribunal may, if it considers it expedient to do so, forward the report to the High Court.

123(A) New insertion.

126(A) New insertion.

127. *Rules.* — (2) (xxxv) prescribe the qualifications of person constituting the co-operative Authority, provide for the terms and conditions of appointment;

(xxxv) prescribe the procedure to be followed in proceeding before the Co-operative Authority, provide for a fixing, levying and collecting appropriate fees and expenses for determining the disputes including expenses incurred by the parties to the proceedings having regard to the service rendered or to be rendered or any expenditure incurred or likely to be incurred for the machinery set up therefor, provide for delegation of the power of fixing the scale of any such fees and expenses being applicable to any disputes and other proceedings which may be pending immediately before the commencement of the Goa Co-operative Societies Act, 2001, or which may be referred to or instituted thereafter, provide for the mode of payment of these fees and expenses, whether in the form of court fee stamps, in cash or in any other manner; and provide, for enforcing the decision, awards or orders in such proceedings;

(xxxvii) prescribe the form in which a dispute shall be referred to the Co-operative Authority;

(xiii) prescribe the procedure to be followed in the execution of awards and orders of the Co-operative authority, Registrar and Liquidator;

130 New insertion.

131 New insertion.

Assembly Hall,
Porvorim, Goa.
19th August, 2008.

R. KOTHANDARAMAN
Secretary to the Legislative
Assembly of Goa.

LA/LEGN/2008/1853

The following bill which was introduced in the Legislative Assembly of the State of Goa on 25-8-2008 is hereby published for general information in pursuance of Rule-138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Sewerage System and Sanitation Services Management Bill, 2008

(Bill No. 40 of 2008)

A

BILL

to make provision for management of sewerage system and sanitation services in the State of Goa and for matters connected and incidental thereto.

Be it enacted by the Legislative Assembly of Goa in the Fifty ninth year of the Republic of India, as follows:—

1. Short title, extent and commencement.—

(1) This Act may be called the Goa Sewerage System and Sanitation Services Management Act, 2008.

(2) It shall extend to the whole of the State of Goa.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. Definitions.— In this Act, unless the context otherwise requires:—

(a) “consumer” means an individual, firm, company, society, Corporation or an association, who/which has obtained piped water connection from the PWD, or has his own arrangements for potable and non-potable water for domestic, commercial or industrial purposes resulting in generation of sewage or waste water and includes all those who generate sewage or waste water even without having any such arrangement for potable or non-potable water;

(b) “dispute” means the dispute or difference arising out of any order, decision or documents issued or taken under this Act or the rules framed thereunder;

(c) “Dispute Redressal Authority” means an authority constituted under Section 7 of this Act;

(d) “Government” means the Government of Goa;

(e) “management” means administration, control, designing, planning, execution, implementation, operation and maintenance of sewerage system and sanitation services.

(f) “notification” means a notification published in the Official Gazette of the Government.

(g) “nuisance” means anything injurious or obnoxious to the community or to any individual and includes sewage or waste water or filth accumulation which in the opinion of the Executive Engineer of the PWD/Health Officer or any other authority authorized in this behalf, breed or likely to breed mosquitoes or otherwise

injurious to health or property unless treated or disposed of effectively to prevent such accumulation;

(h) “Official Gazette” means the Official Gazette of the Government;

(i) “prescribed” means prescribed by rules made under this Act;

(j) “public sewer” means a pipe or underground conduit or such other device meant to carry untreated sewage and contaminated or polluted water generated from the existing building or construction site, existing in or under the adjoining street, lane or any kind of road or pathway and forming component of the sewerage system controlled by the PWD;

(k) “PWD” means Public Works Department of the Government;

(l) “sanitation services” means developing, operating and maintaining the facilities like pour flush water seal latrines, public toilets for educational institutions, community health centers, contaminated or polluted water treatment and safe disposal systems and other such facilities resulting out of programs in public health and sanitation sector implemented by the PWD for the State or any other authority authorized in this behalf;

(m) “sewage” means night-soil and other contents of water closets, latrines, urinals, cesspools, drains and polluted water from sinks, bathrooms, stables, cattle-sheds, discharges of filth, trade effluents, industrial effluents of specified standards from any kind of building as well as from public conveyances, markets, public places, religious places and educational institutions;

(n) “sewerage system” means the system developed and constructed for facilitating collection, conveyance, pumping, if so warranted, of sewage and includes facilities of the treatment of sewage as per the standards specified by the Goa State Pollution Control Board and safe disposal of treated effluents and non-harmful sludge on land, water bodies or non-potable use, all under control of the PWD;

(o) “State” means the State of Goa;

(p) “Technical Committee” means a committee appointed by the Government consisting of prescribed officers entrusted with the functions as prescribed for the purposes of the Act.

3. *Management of sewerage system and sanitation services.*— (1) On and from the date of coming into force of this Act, sewerage systems and sanitation services for the consumers in the State shall be managed and controlled by the PWD, whenever and wherever such facilities are operational and developed by the PWD in accordance with the provisions of this Act and rules framed thereunder.

(2) Except as otherwise provided by the rules made in this behalf, any consumer intending to avail the facility of sewerage system or use of sanitation services managed by the PWD, shall make an application in writing to prescribed authority for grant of authorization or permission in such for along with such documents and a fee as prescribed.

(3) On receipt of application under sub-section (2), the prescribed authority may subject to provisions of the Act, make such inquiry as it deems fit and if it is satisfied that the consumer is possessing necessary infrastructure to avail the facilities in accordance with the rules,—

(i) grant the permission unconditionally; or

(ii) grant the permission subject to such general or special conditions as it may impose; or

(iii) refuse the permission for reasons to be recorded in writing, after giving a reasonable opportunity of being heard to the applicant.

(4) Every application for grant of permission shall be disposed of by the prescribed authority within a period of 90 days from the date of receipt of the application.

(5) The prescribed authority may cancel or suspend the permission, as the case may be, for reasons to be recorded in writing if the consumer has failed to comply with any provision of the Act or rules or condition of permission granted thereof:

Provided that no permission shall be cancelled or suspended without giving a reasonable opportunity to the consumer of being heard.

4. *Prohibition of nuisance.*— (1) On and from the date of enforcement of this Act, no person shall cause any nuisance injurious to health or property.

(2) Every person shall avail the facility of sewerage system and sanitation services, wherever feasible, in order to prevent nuisance.

5. *Exemptions.*— Wherever, in the opinion of the Government reasonable grounds exist in doing so, the Government may, by notification and subject to such conditions and restrictions as may be specified, exempt any category of consumers from all or any of the provisions of this Act or the rules made thereunder, either throughout the State or for any specified period or occasion, with the advice of the Technical Committee.

6. *Taking over Sewerage systems and sanitation facilities developed by other.*— The PWD, may subject to prior approval of the Government and the Technical Committee, take-over, the sewerage and sanitation facilities developed by municipal councils, corporations, panchayats, autonomous bodies, industrial estates, Government undertakings, private developers or charitable institutions etc.; constructive and overall development of sewerage system and sanitation services in the State and it's management.

7. *Dispute Redressal Authority.*— (1) The Government may, by notification in the Official Gazette, appoint such member of Dispute Redressal Authorities as may be required for redressal of the disputes.

(2) The Dispute Redressal Authority shall comprise of three members including a Chairman, each of them shall have knowledge and experience in one or more fields of engineering, medical, health, environment, sanitation, administration, law, finance keeping in view the nature of dispute.

(3) The Dispute Redressal Authority shall pass orders after giving a reasonable opportunity of being heard to the parties to the dispute.

8. *Appeal.*— (1) Any person aggrieved by an order passed by the Dispute Redressal Authority or the prescribed authority may file an appeal in

the prescribed manner to the Appellate Authority to be appointed by the Government, under this Act.

(2) The Appellate Authority shall pass orders after giving a reasonable opportunity of being heard to the parties to the appeal.

(3) The Order of the Appellate Authority shall be final and binding on the parties.

9. *Offences and Penalties.*— Any person, who has,—

(a) made a connection to sewerage system without any approval of PWD.

(b) allowed discharge of the characteristics of sewage or polluted water other than those specified by the Government by rules, by any means whatsoever, into the sewerage system managed by the PWD.

(c) caused disruption to sewerage system or sanitation service giving rise to nuisance or likely to cause nuisance.

(d) committed nuisance or abetted commission of nuisance shall be deemed to have committed an offence under this Act and be punished with a fine which may extend up to rupees fifty thousand along with the actual cost of restoration of sewerage system or sanitation service, as the case may be, as determined by the Technical Committee.

10. *Act to have effect in addition to other Acts.*— The provision of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

11. *Protection of action taken in good faith.*— No suit, prosecution or other legal proceedings shall lie against the Government, the prescribed authority, the Dispute Redressal Authority, the Appellate Authority, or any other officer or servant in the employment of Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

12. *Power to make rules.*— (1) The Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:—

(a) The categories of consumers who could avail different types of services under this Act;

(b) Fees, tariffs, service connection charges and any other applicable charges, penalty and fines for non-payment thereof for different categories of consumers;

(c) Form of application to be made under sub-section (2) of section 3, form of affidavits, undertaking, no objection certificates or other documents, if any to be accompanied with application, form of agreement to be made with PWD for use of sewerage system or to avail sanitation services under this Act;

(d) the methods for payment of bills including billing cycles and period for payment and grace period, if any, recovery of arrears, grant of concessions for any charges or effecting the payments in particular manner;

(e) Procedure to be followed by Dispute Redressal Authority for redressal of disputes;

(f) Technical parameters for building sewerage system and characteristics of sewage or polluted water that can enter the sewerage system;

(g) composition of technical Committee and allocation of specific functions to it for the purposes of this Act;

(h) manner of making an appeal against the order passed by the Dispute Redressal Authority or prescribed authority, as specified in section 8;

(i) restricting the entry of sewage, trade effluent, polluted water and other such liquid or solid waste in public sewer;

(j) any other matter which is required to be provided by rules by the Government.

(3) Every rule made by the Government under this section shall be laid as soon as may be after it is made, before the State Legislature.

Statement of Objects and Reasons

At present, there is no legislation of rules regulating or controlling the sewerage system and sanitation services in the State of Goa. The sewerage services are at present being governed by a mere simple agreement. The sewerage schemes and sanitation programmes are developed, implemented and managed by the Public Works Department. The Bill seeks to make provisions to manage the sewerage system and sanitation services developed by the Public Works Department in a workmanship like manner.

The Bill seeks to achieve the above objects.

Financial Memorandum

For managing the sewerage system and sanitation services and related matters, the Public Works Department of the Government of Goa has necessary infrastructure viz, Sub-division, Divisions and Circle Offices, Chief Engineer and the Principal Chief Engineer appointed by the Government.

It is proposed to meet the entire needs of the management of sewerage system and sanitation services from the existing staff of the Public Health Engineering Wing of the Public Works Department. Scientific analysis of sewage, waste water and other relevant tests shall be got done through the existing laboratories of the Public Works Department.

As such, there may not be any additional financial implications.

Memorandum Regarding Delegated Legislation

Sub-clause (3) of clause 1 of the Bill empowers the Government to appoint a date, by notification in the Official Gazette, for bringing the Act into force.

Clause 2 empowers the Government to frame rules specifying the members of technical committee and its functions.

Sub-clause (2) of clause 3 of the Bill empowers the Government to specify by the rules the authority to whom the application is to be made for grant of authorization or permission to avail the facility of sewerage system or use of sanitation services managed by the PWD and the form of application, documents and a fee to be accompanied with the application.

Sub-clause (3) of clause 3 of the Bill empowers the Government to specify by rules the conditions and restrictions subject to which permission to use sewerage system or avail sanitation services shall be issued.

Clause 5 of the Bill empowers the Government to exempt any category of consumers from all or any of the provisions of the Act by notification in the Official Gazette.

Sub-clause (1) of clause 7 of the Bill empowers the Government to appoint Dispute Redressal Authority, by notification in the Official Gazette.

Sub-clause (1) of clause 8 of the Bill empowers the Government to specify by rules the manner of making an appeal.

Clause 12 of the Bill empowers the Government to frame rules to carry out the provisions of the Act.

These delegations are of normal character.

Financial Memorandum

No financial implications are involved in this Bill.

Porvorim – Goa,
Dated: 19-8-08.

Shri Churchill Alemao
Hon. Minister for PWD.

Assembly Hall,
Porvorim–Goa.
Dated: 19-8-08.

R. KOTHANDARAMAN
Secretary to the Legislative
Assembly of Goa.

LA/LEGN/2008/1861

The following bill which was introduced in the Legislative Assembly of the State of Goa on 26-8-2008 is hereby published for general information in pursuance of Rule-138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

THE GOA SCHOOL EDUCATION (AMENDMENT) BILL, 2008

(Bill No. 34 of 2008)

A

BILL

further to amend the Goa, Daman and Diu School Education Act, 1984 (Act 15 of 1985). Be it enacted by the Legislative Assembly of Goa in

the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Goa School Education (Amendment) Act, 2008.

(2) It shall come into force at once.

2. *Amendment of section 11.*— In section 11 of the Goa, Daman and Diu School Education Act, 1984 (Act 15 of 1985) (hereinafter referred to as the “principal Act”), in sub-section (1A), for the expression “a teacher of a recognized private school, whether aided or not, shall retire at the age of 60 years and an employee, other than a teacher, of such school shall retire at the age of 58 years”, the expression “every employee of a recognized private school, whether aided or not, shall retire at the age of 60 years” shall be substituted.

3. *Amendment of section 24.*— In section 24 of the principal Act, in sub-section (2), in clause (c), for the word “three”, the word “four” shall be substituted.

Statement of Objects and Reasons

In terms of sub-section (1A) of section 11 of the Goa, Daman and Diu School Education Act, 1984 (Act 15 of 1985), a teacher of recognized private school, whether aided or not, shall retire at the age of 60 years and an employee, other than a teacher of such school shall retire at the age of 58 years. The Bill seeks to amend said sub-section (1A) of section 11 of the said Act so as to provide that all employees of a recognized private school, whether aided or not, shall retire at the age of 60 years like the counterpart in Government school. In order to afford due representation to the Higher Secondary Principals Forum on the Goa School Education Board, the Bill seeks to amend clause (c) of sub-section (2) of section 24 of the said Act, suitably.

This Bill seeks to achieve the above objects.

Financial Memorandum

Financial implications are involved in this Bill, as all the employees of recognized private schools, whether aided or not, will continue in service till they attain the age of 60 years. The financial implications will be towards the payment of pay and allowances, enhanced death cum retirement gratuity, leave encashment and enhanced monthly

pension. The Bill, after enactment, will have financial burden on the exchequer which cannot be quantified at this stage.

Memorandum Regarding Delegated Legislation

No delegated legislation is involved in this Bill.

Porvorim, Goa.
August, 2008.

ATANASIO MONSERRATE
Minister for Education

Assembly of Goa.
Assembly Hall,
Porvorim – Goa.

R. KOTHANDARAMAN
Secretary to the Legislative
Assembly of Goa.

August, 2008.

Governor's Recommendation under Article 207 of the Constitution

In pursuance of Article 207 of the Constitution of India, I, Dr. Shivinder Singh Sidhu, Governor of Goa, hereby recommended the introduction and consideration of the Goa School Education (Amendment) Bill, 2008, by the Legislative Assembly of Goa.

(Annexure to Bill No. 34 of 2008)

The Goa School Education (Amendment) Bill, 2008

.....
The Goa, Daman and Diu School Education Act, 1984
(Act 15 of 1985)
.....

Section 11.— Of the Goa, Daman and Diu School Education Act, 1984 (Act 15 of 1985), in sub-section (1A), for the expression “every employee of a recognized private school, aided or not, shall retire at the age of 58 years”, the expression “a teacher of a recognized private school, whether aided or not, shall retire at the age of 60 years and an employee, other than a teacher, of such school shall retire at the age of 58 years”, shall be substituted.

Section 24 (2) (c).— Three representatives of organizations of teachers of recognized private schools.

Assembly Hall,
Porvorim – Goa.

R. KOTHANDARAMAN
Secretary to the Legislative
Assembly of Goa.

LA/LEGN/2008/1862

The following bill which was introduced in the Legislative Assembly of the State of Goa on 26-8-2008 is hereby published for general information in pursuance of Rule-138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

THE GOA HEALTH SERVICES
DEVELOPMENT BILL, 2008

(Bill No. 41 of 2008)

A

BILL

To make special provision for securing the establishment and orderly development of health institutions, services and facilities in the State of Goa primarily for implementing the Universal Medclaim Scheme and management of assets belonging to Health Department, Asilo Hospital, Hospicio Hospital as decided by the Government and in particular in the health estates, and to assist generally in the organization thereof, and for that purpose to establish a Goa Health Services Development Corporation, and for purposes connected with the matters aforesaid.

Be it enacted by the Legislative Assembly of Goa in the Fifty-ninth Year of the Republic of India, as follows:—

CHAPTER - I

Preliminary

1. *Short title, extent and commencement.*— (1) This Act may be called the Goa Health Services Development Act, 2008.

(2) It shall extend to the whole of the State of Goa.

(3) It shall come into force at once.

2. *Definitions.*— In this Act, unless the context otherwise requires,—

(a) “amenity” includes road, supply of water or electricity, street lighting, drainage, sewerage, conservancy and such other convenience as the Government may, by Notification in the Official Gazette, specify to be an amenity for the purposes of this Act;

(b) “building” means any structure or erection, or a part of a structure, or erection, which is intended to be used for residential, health establishment, commercial or other purposes, whether in actual use or not;

(c) “Collector” means the Collector of a District and includes any Officer specially appointed by the Government to perform the functions of a Collector under this Act;

(d) “Corporation” means the Goa Health Services Development Corporation established under section 3;

(e) “development” with it’s grammatical variations, means the carrying out of building, engineering, quarrying or other operations, in, on, over or under land, or the making of any material change in any building or land, and includes re-development, but does not include mining operations and to “develop” shall be construed accordingly;

(f) “engineering operation” include the formation or laying out of means of access to a road or the laying out of means of water supply;

(g) “Government” means the Government of the State of Goa;

(h) “health Estate” means any area declared to be a Health Estate by the Government by Notification in the Official Gazette, which is to be developed and where health establishments are to be accommodated;

(i) “health services” means any services by way of finance, premises, hospitals, health centers, and any other services for betterment of health of the community and society at large.

(j) “means of access” includes a road, wharf or any means of access, whether private or public, for vehicles or boats or for foot passengers;

(k) “premises” means any land or building or part of a building and includes—

(i) the garden, grounds and out-house, if any, appertaining to such building or part of a building; and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

(l) “prescribed” means prescribed by rules made under this Act;

(m) the expression “land” and the expression “person interested” shall have the meanings respectively assigned to them in section 3 of the Land Acquisition Act, 1894 (1 of 1894).

(n) “Universal Mediclaim Scheme” means a medical claim scheme as notified by the Government from time to time.

CHAPTER - II

Establishment and Constitution of the Corporation

3. *Establishment and incorporation.*— (1) For the purpose of securing and assisting in the rapid and orderly establishment and organisation of establishments for health services for the purpose of implementing the Universal Mediclaim Scheme and health estates/medical tourism/health city etc. in the State of Goa there shall be established by the Government by Notification in the Official Gazette, a Corporation by the name the Goa Health Services Development Corporation.

(2) The said Corporation shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name, and shall be competent to acquire, hold and dispose of property both movable and immovable, and to contract, and do all things necessary for the purposes of this Act.

4. *Constitution.*— (1) The Corporation shall consist of the following twelve Directors that is to say:—

(a) Minister in charge of the Public Health Department;

(b) Secretary to the Government in the Health Department;

(c) Joint Secretary to the Government in Health Department;

(d) Joint Secretary to the Government in Finance (Expenditure) Department;

(e) Director of Health Services in the Directorate of Health Services, Goa;

(f) An Eminent Chartered Accountant with atleast 10 years experience to be nominated by the Government;

(g) Nominee of the Goa Chamber of Commerce and Industry;

(h) A person having expertise in the field of health services to be nominated by the Government;

(i) A person with 5 years of experience in administration/financial services/medical insurance having MBA to be nominated by the Government;

(j) Two persons to be nominated by the Government;

(k) The Managing Director of the Corporation, who shall be the Chief Executive of the Corporation, shall also be the Ex Officio Secretary to the Corporation;

(2) The Minister in charge of Public Health Department, Government of Goa shall be the Chairperson of the Corporation.

5. *Disqualification for Director.*— A person shall be disqualified for being nominated as a Director of the Corporation, if he—

(a) is an employee of the Corporation, not being the Managing Director; or

(b) is of unsound mind, and stands so declared, by a competent Court; or

(c) is an undischarged insolvent; or

(d) is convicted of an offence involving moral turpitude within a period of five years immediately before his being nominated as a Director.

6. *Term of office and conditions of service of Director.*— (1) The Directors of the Corporation nominated under clauses (h), (i) and (j) of sub-section (1) of section 4, shall hold office for a period of 3 years from the date of their nomination unless their term of office is terminated earlier by the Government.

(2) The Director of the Corporation nominated under clauses (g), (h), (i) and (j) of sub-section (1) of section 4 shall be entitled to draw such honorarium or compensatory allowance for the purpose of meeting the personal expenditure in attending the meeting of the Corporation or of any Committee thereof or when appointed in connection with the work undertaken by or for the Corporation, as may be prescribed.

(3) It is hereby declared that the office of Director or Chairman of the Corporation, in so far as it is an office of profit under the Government of India, or the Government of any State, or the Government of any Union Territory shall not disqualify the holder for being chosen as, and for being member of the Legislative Assembly of Goa.

7. *Meetings of Corporation.*— (1) The Corporation shall meet at such times and places, and shall subject to the provisions of sub-section (2) observe such rules of procedure in regard to the transaction of its business as may be provided by regulation made under this Act.

(2) A Director, who is directly or indirectly concerned or interested in any contract, loan, arrangement or proposal entered into or proposed to be entered into by or on behalf of the Corporation shall, at the earliest, possible opportunity, disclose the nature of his interest to the Corporation when any such contract, loan, arrangement or proposal is discussed.

8. *Cessation of Director.*— (1) If a Director,—

(a) becomes subject to any of the disqualifications mentioned in section 5; or

(b) tenders his resignation in writing to, and such resignation is accepted by, the Government; or

(c) is absent without the Corporation's permission from three consecutive meetings of the Corporation, or from all meetings of the Corporation for three consecutive months; or

(d) is convicted of an offence involving moral turpitude,— he shall cease to be a Director of the Corporation.

(2) The Government may by order suspend from office for such period as it thinks fit, or remove from office any Director of the Corporation, who in its opinion,—

(a) has refused to act; or

(b) has become incapable of acting; or

(c) has so abused his position as Director as to render his continuance on the Corporation detrimental to the interest thereof or of the general public; or

(d) is otherwise unfit to continue as a Director:

Provided that, a Director shall not be suspended or removed from his office unless he has been given a reasonable opportunity to show cause against the order.

9. *Vacancies how to be filled.*— Any vacancy of a Director of the Corporation shall be filled as early as practicable, in the like manner as if the appointment was being made originally:

Provided that, during any such vacancy the continuing Directors may act as if no vacancy had occurred.

10. *Temporary absence of Directors.*— (1) If the Director of the Corporation is by reason of illness or otherwise rendered temporarily incapable of carrying out his duties, or is granted leave of absence by the Government, or is otherwise unable to attend his duties in circumstances not involving the cessation of his Directorship, the Government may appoint another person to act for him and carry out his duties and functions by or under this Act. Such person shall vacate office on the date when the Director for whom he is acting resumes his duties.

(2) In the absence of Chairman, the Directors present shall choose the Presiding Officer to preside over the meeting.

11. *Proceeding presumed to be good and valid.*— No disqualification of, or defect in the appointment of, any person acting as the Chairman or a Director of the Corporation, shall vitiate any act or proceeding of the Corporation if such act or proceeding is otherwise in accordance with the provisions of this Act.

12. *Officers and servants of the Corporation.*— (1) The Government shall appoint a Managing Director and a Chief Accounts Officer of the Corporation.

(2) The Corporation may appoint, such other officers and servants, subordinate to the officers mentioned in sub-section (1), as it considers necessary for the efficient performance of its duties and functions.

(3) The conditions of appointment and service of the officers and servants of the Corporation and their scales of pay shall—

(a) as regards the Managing Director and the Chief Accounts Officer, be such as may be prescribed; and

(b) as regards the other officers and servants, be such as may be determined by regulations made under this Act.

CHAPTER - III

Functions and Powers of the Corporation

13. *Functions.*— The functions of the Corporation shall be,—

(i) Generally to promote and assist in the rapid and orderly establishment, growth and development of health services in the State of Goa.

(ii) In particular, and without prejudice to the generality of clause (i), to—

(a) establish and manage health estates/medical tourism/health city at places selected by the Government;

(b) develop health estates selected by the Government for the purpose, construct premises and make them available for undertakings to establish themselves;

(c) to operate any scheme, on behalf of Government, related with health services;

(d) undertake Schemes or works either jointly or on agency basis with other corporate bodies or institutions, or with Government in furtherance or the purposes for which the Corporation is established and all matters connected therewith;

(e) to establish health establishments, health estates/health city, operate schemes related to health sector by self, jointly with Government agencies or private parties in joint sector or on public private partnership basis.

14. *General powers of the Corporation.*— Subject to the provisions of this Act, the Corporation shall have power,—

(a) to acquire and hold such property, both movable and immovable, as the Corporation may deem necessary for the performance of any of its activities, and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the Corporation;

(b) to provide or cause to be provided amenities and common facilities in health estates and

construct and maintain or cause to be maintained works and buildings therefor;

(c) to make available buildings on hire or sale to persons intending to start health establishments;

(d) to construct buildings for the housing of the employees of health establishments;

(e) (i) to allot ready built sheds or such buildings or parts of buildings, including residential tenements to suitable persons in the health estates established or developed by the Corporation;

(ii) to modify or rescind such allotments, including the right and power to evict the allottees concerned on breach of any of the terms or conditions of their allotment;

(f) to constitute advisory committee to advise the Corporation;

(g) to engage suitable consultants or persons having special knowledge or skill to assist the Corporation in the performance of its functions;

(h) to delegate any of its powers generally or specially to any of its committees or officers, and to permit them to re-delegate specific powers to their subordinates;

(i) to enter into and perform all such contracts as it may consider necessary or expedient for carrying out any of its functions; and

(j) to do such other things and perform such acts as it may think necessary or expedient for the proper conduct of its functions and the carrying into effect the purposes of this Act.

15. *Authentication of orders and documents of Corporation.*— All permissions, orders, decisions, notices and other documents of the Corporation shall be authenticated by the signature of the Managing Director of the Corporation or any other Officer authorised by the Corporation in this behalf.

16. *Directions by the Government.*— The Government may issue to the Corporation such general or special directions as to policy as it may think necessary or expedient for the purpose of carrying out the purposes of this Act and the Corporation shall be bound to follow and act upon such directions.

CHAPTER - IV

Finance, Accounts and Audit

17. *Application of Corporation's assets.*— All property, funds and other assets vesting in the Corporation shall be held and applied by it, subject to the provisions and for the purposes of this Act.

18. *Corporation's fund.*— (1) The Corporation shall have and maintain its own fund, to which shall be credited.—

(a) all monies received by the Corporation by way of grants, subventions, loans, advances or otherwise from the Government or Financial Institutions or other Corporate Bodies;

(b) all fees, costs and charges received by the Corporation under this Act;

(c) all monies received by the Corporation from the disposal of lands, buildings and other properties movable and immovable and other transactions;

(d) all monies received by the Corporation by way of rents and profits, or in any other manner or from any other source including the proceeds of any loan authorised by section 20.

(2) The Corporation may keep in current or in deposit account with the State Bank of India or any other Bank approved by the Government in this behalf such sum of money out of its fund as may be prescribed and any money in excess of the said sum shall be invested in such manner as may be approved by the Government.

(3) Such accounts shall be operated upon by such officers of the Corporation as may be authorised by it by regulations made in this behalf.

19. *Grants, subventions, loans and advances and capital contribution to the Corporation.*— The Government may, after due appropriation made by the State Legislature by any law in this behalf, make such grants, subventions, loans and advances and capital contribution to the Corporation as it may deem necessary for the performance of the functions of the Corporation under this Act and all grants, subventions, loans and advances and capital contribution made shall be on such terms and conditions as the Government may after consulting the Corporation, determine.

20. *Power of the Corporation to borrow.*— The Corporation may, subject to such conditions as may be prescribed in this behalf, borrow money from bank, financial institutions or in the open market or otherwise with a view to provide itself adequate resources.

21. *Deposits.*— The Corporation may accept deposits on such conditions as it deem fit from persons, authorities or institutions to whom allotment or sale of land, buildings or sheds is made or is likely to be made in furtherance of the objects of this Act.

22. *Reserve and other funds.*— (1) The Corporation shall make provision for reserve and other specially denominated funds as the Government may, from time to time, direct.

(2) The management of the funds referred to in sub-section (1), the sums to be transferred from time to time to the credit thereof and the application of money comprised therein, shall be determined by the Corporation.

(3) None of the funds referred to in sub-section (1) shall be utilised for any purpose other than that for which it was constituted, without the previous approval of the Government.

23. *Expenditure from funds.*— (1) The Corporation shall have the authority to spend such sums as it thinks fit for the purposes authorised under this Act from the general fund of the Corporation referred to in section 18 or from the reserve and other funds referred to in section 22, as the case may be.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the Corporation may contribute such sums as it thinks fit towards expenditure incurred or to be incurred by any local authority or statutory public undertaking in the performance, in relation to any of the statutory functions of such authority or undertaking, including expenditure incurred in the acquisition of land.

24. *Budget and programme of work.*— (1) The Corporation shall, by such date in each year as may be prescribed, prepare and submit to the Government for approval an annual financial statement and the programme of work for the succeeding financial year.

(2) The annual financial statement shall show the estimated receipts and expenditure during the succeeding financial year in such form and detail as may be prescribed.

(3) The Corporation shall be competent to make variations in the programme of work in the course of the year, provided that all such variations and re-appropriations out of the sanctioned budget are brought to the notice of the Government by a supplementary financial statement

(4) A copy each of the annual financial statement and the programme of work and the supplementary financial statement, if any, shall be placed before the Legislative Assembly as soon as may be after their receipt by the Government.

25. *Accounts and audit.*— (1) The Corporation shall maintain books of account and other books in relation to its business and transaction in such form and in such manner, as may be prescribed.

(2) The accounts of the Corporation shall be audited by an auditor, appointed by the Government, in the prescribed manner.

(3) As soon as the accounts of the Corporation are audited the Corporation shall send a copy thereof with a copy of the report of the auditor thereon to the Government.

(4) The Government shall cause the accounts of the Corporation together with the audit report thereon forwarded to it under sub-section (3) to be laid annually before the Legislative Assembly.

26. *Concurrent and special audit of accounts.*— (1) Notwithstanding anything contained in section 25, the Government may order that there shall be concurrent audit of the accounts of the Corporation by such persons as it thinks fit. The Government may also direct that a special audit be also made by such person as it thinks fit of the accounts of the Corporation relating to any particular transaction or class or series of transactions or to a particular period.

(2) When an order is made under sub-section (1), the Corporation shall present or cause to be presented for audit such accounts and shall furnish the person appointed under sub-section (1) such information as the said person may require for the purpose of audit.

CHAPTER - V

27. *Acquisition of land for the Corporation to be a public purpose.*— Any land required by the Corporation for carrying out any of its functions shall be deemed to be needed for a public purpose and may be acquired under the provisions of the Land Acquisition Act, 1894 (1 of 1894) or any other law for the time being in force.

28. *Disposal of land by the Corporation.*— (1) Subject to any directions given by the Government under this Act, the Corporation may dispose of—

(a) any land acquired by the Government and transferred to it, without undertaking or carrying out any development thereon; or

(b) any such land after undertaking or carrying out such development as it thinks fit, to such persons in such manner and subject to such terms and conditions, as it considers expedient for securing the purposes of this Act.

(2) The powers of the Corporation with respect to the disposal of land under sub-section (1) shall be so exercised as to secure so far as practicable, that—

(a) where the Corporation proposes to dispose of by sale any such land without any development having been undertaken or carried out thereon, the Corporation shall offer the land in the first instance to the person from whom it was acquired, if they desire to purchase it, subject to such requirements as to its development and use as the Corporation may think fit to impose;

(b) persons who are residing or carrying on business or other activities on any such land shall, if they desire to obtain accommodation on land belonging to the Corporation and are willing to comply with any requirements of the Corporation as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.

(3) Nothing in this Act shall be construed as enabling the Corporation without the approval of the Government to dispose of land by way of gift, mortgage or charge, but subject as aforesaid any reference in this Act to the disposal of land shall

be construed as a reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement, right or privilege or otherwise.

29. *Government lands.*— (1) For the furtherance of the objects of this Act, the Government may, upon such conditions as may be agreed upon between Government and the Corporation, place at the disposal of the Corporation any lands vested in the Government.

(2) After any such land has been developed by, or under the control and supervision of the Corporation, it shall be dealt with by the Corporation in accordance with the regulations made, and directions given by the Government in this behalf.

(3) If any land placed at the disposal of the Corporation under sub-section (1) is required at any time thereafter by the Government, the Corporation shall replace it at the disposal of the Government upon such terms and conditions as may be mutually agreed upon.

CHAPTER - VI

Supplementary and Miscellaneous Provisions

30. *Powers of Corporation in case of certain defaults by owner of land in health estates.*— (1) If the Corporation after holding local inquiry, or upon report from any of its officers or other information in its possession, is satisfied that the owner of any land in a health estate has failed to provide any amenity in relation to the land which in the opinion of the Corporation ought to be provided or to carry out any development of the land for which permission has been obtained under this Act, the Corporation may serve upon the owner a notice requiring him to provide the amenity or carry out the development within such time as may be specified in the notice.

(2) If any such amenity is not provided or any such development is not carried out within the time specified in the notice, the Corporation may itself provide the amenity or carry out the development or have it provided or carried out through such agency as it deems fit:

Provided that, before taking any action under this sub-section, the Corporation shall afford reasonable opportunity to the owner of the land to show cause as to why such action should not be taken.

(3) All expenses incurred by the Corporation or the agency employed by it in providing the amenity or carrying out the development together with interest, at such rate as the Government may by order fix, from the date when a demand for the expenses is made until payment, shall be recoverable by the Corporation from the owner.

31. *Order of demolition of building.*— (1) Where the erection of any building in a health estate has been commenced, or is being carried on, or has been completed, or any existing building is altered, in contravention of the terms on which such building or the land on which it stands is held or granted by or under this Act, or any rules made thereunder, any officer of the Corporation empowered by it in this behalf may, in addition to any prosecution that may be instituted under this Act, make an order directing that such erection shall be demolished by the owner thereof within such period not exceeding two months as may be specified in the order, and on the failure of the owner to comply with the order, the officer may himself cause the erection to be demolished and the expenses of such demolition shall be recoverable by the Corporation from the owner:

Provided that, no such order shall be made unless the owner has been given a reasonable opportunity to show cause why the order should not be made.

(2) Any person aggrieved by an order under sub-section (1) may appeal against that order within thirty days from the date thereof to a Committee of the Corporation set up for the purpose by regulations made in this behalf. Such Committee may after hearing the parties to the appeal either allow or dismiss the appeal or reverse or vary the order or any part of it.

(3) The decision of the Committee on the appeal and subject only to such decision the order made by the officer under sub-section (1) shall be final.

32. *Power to stop building operations.*— (1) Where the erection of any building in a health estate has been commenced, or is being carried on, or has been completed, or any existing building is altered, in contravention of the terms on which such building or the land on which it stands is held or granted under this Act or any rules made thereunder, any officer of the Corporation empowered in this behalf may, in addition to any prosecution that may be instituted under this Act,

make an order requiring the building operations in relation to such erection to be discontinued on and from the date of service of the order.

(2) Where such building operations are not discontinued in pursuance of the requisition under sub-section (1), the Corporation or the officer empowered as aforesaid may require any police officer to remove the person by whom the erection of the building has been commenced and all his assistants and workmen from the place of the building within such time as may be specified in the requisition and such police officer shall comply with the requisition accordingly.

(3) After a requisition under sub-section (2) has been complied with, the Corporation or the officer empowered as aforesaid may depute by a written order a police officer or an officer, or employee of the Corporation to watch the place in order to ensure that the erection of the building is not continued.

(4) Any person failing to comply with an order made under sub-section (1) shall, on conviction, be punished with fine which may extend to two hundred rupees for every day during which such non-compliance continues after the service of the order.

(5) No compensation shall be claimed by any person for any damage or loss which he may sustain in consequence of any order made under this section.

33. Penalty for construction or use of land and buildings contrary to the terms of holding.— (1) Any person who, whether at his own instance or at the instance of any other person, undertakes or carries out construction of, or alterations to, any building in a health estate contrary to the terms under which he holds such building or land under this Act or any rules made thereunder shall, on conviction be punished with fine which may extend to ten thousand rupees, and in the case of a continuing contravention with a further fine which may extend to five hundred rupees for each day during which such offence continues after conviction for the commission of first offence.

(2) Any person who uses any land or building in a health estate contrary to the terms under which he holds such land or building under this Act or any rules made thereunder or in contravention of the provisions of any regulations made in this behalf

shall, on conviction, be punished with fine which may extend to five thousand rupees.

34. Power to lay pipe lines, etc.— (1) Within any estate taken up for development under sub-clause (b) of clause (ii) of section 13, the Corporation, or any person empowered in this behalf by the Government by Notification in the Official Gazette (hereinafter in this section referred to as “the authorised person”), may, for the purposes of (a) carrying gas, water or electricity from a source of supply to the said area or (b) constructing any sewers or drains through, any intervening area, lay down, place, maintain, alter, remove or repair any pipes, pipe lines, conduits, supply or service lines, posts or other appliances or apparatus in, on, under, over, along or across any land in such estate.

(2) The Corporation or the authorised person may at any time enter upon any land in any such estate and in such event the provisions of section 35 shall mutatis mutandis apply.

(3) While exercising the power conferred by sub-section (1), the Corporation or the authorised person shall cause as little damage as possible to property. Full compensation to all persons interested for any damage sustained by them in consequence of the exercise of such power as aforesaid shall be paid, as the case may be, by the Corporation or, in the case of the authorised person, by the Government.

(4) Nothing herein shall authorise or empower the Corporation or the authorised person to lay down or place any pipe or other works into, through or against any building or in any land not dedicated to public use without the consent of the owners and occupiers thereof, except that the Corporation or such person may at any time enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe has been already lawfully laid down or placed in pursuance of this Act, and may repair or alter any pipe so laid down:

Provided that, nothing in the aforesaid provision shall be construed to mean that the Corporation or other person is forbidden from having the said land acquired at any time by the Government in the normal course.

35. Powers of entry.— Any officer of Government, any member of the Corporation, and any person

either generally or specially authorised by the Corporation in this behalf, may enter into or upon any land or building with or without assistants of workmen for the purpose of—

(a) making any inspection, survey, measurement, valuation or enquiry or taking, levels of such land or building;

(b) examining works under construction and ascertaining the course of sewers and drains;

(c) digging or boring into the sub-soil;

(d) setting out boundaries and intended lines of work;

(e) marking such levels, boundaries and lines by placing marks and cutting trenches;

(f) doing any other thing necessary for the efficient administration of this Act:

Provided that,—

(i) no such entry shall be made except between the hours of sunrise and sunset and without giving reasonable notice to the occupier, or if there be no occupier to the owner of the land or building;

(ii) sufficient opportunity shall in every instance be given to enable women (if any) to withdraw from such land or building;

(iii) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the land or building entered.

36. *Officers of the Corporation may be vested with other powers.*— The Government may, by Notification in the Official Gazette, nominate any officer of the Corporation to be a controller or licensing authority under any law for the time being in force relating to the procurement or distribution of any commodity in respect of the health undertakings established or to be established in the health estates entrusted to or developed by the Corporation and no such nomination shall be called into question merely on the ground that such officer is not an officer of the Government.

37. *Overriding powers of Government to issue directions to local authorities.*— Notwithstanding anything contained in any other law, or in any licence or permit, if the Government is satisfied either on a recommendation made in this behalf by the Corporation or otherwise, that the setting up of a health undertaking (whether within a health estate or outside) is impeded by a local authority's refusal to grant or by such authority's insistence on conditions which the Government considers unreasonable for the grant of, any amenity, the Government may direct the local authority to grant the said amenity on such conditions as it may consider fit and thereupon the amenity shall be granted:

Provided that the charge to be paid for granting or continuing such amenity to the local authority concerned is not less than the cost to the local authority or licensee concerned for providing such amenity:

Provided further that, no such direction shall be issued by the Government unless the local authority shall have been given a reasonable opportunity to show cause why any such direction should not be made.

38. *Declaration as health estate.*— (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, the Government may, by Notification in the Official Gazette.—

(a) declare a health estate which is—

(1) earmarked as health estate; and

(2) having adequate facilities in respect of power, roads, water supply, to be notified estate;

(b) appoint the Corporation or any Officer or Committee thereof for the purpose of the assessment and recovery of any taxes when imposed as per the provisions made thereof;

(c) declare that the provisions of any law relating to local authorities providing for control or erection of buildings, levy and collection of taxes, fees and other dues to the local authority which is in force in that notified estates shall cease to apply and thereupon such provisions shall cease to apply thereof:

Provided that the Municipalities, Village Panchayats and Municipal Corporations which were receiving house tax from the occupants in the notified estates under their respective laws, shall be compensated by the Government to the extent of the last financial year's collection of taxes for such period as may be determined by the Government which shall not be less than five years.

(d) make other provision as is necessary for the purpose of the enforcement of the provision so provided to that estate.

(2) Before the publication of a Notification under sub-section (1), the Government shall cause to be published in the Official Gazette and also in at least one newspaper published in a language other than English and circulating in the estate to be specified in the Notification, inviting all persons who entertain any objections to the said proposal to submit the same in writing with reasons therefor to the Government within two months from the date of publication of the proclamation in the Official Gazette.

(3) No such Notification under sub-section (1) shall be issued by the Government, unless the objections, if any, so submitted under sub-section (2) are in its opinion insufficient or invalid.

39. *Recovery of sums due to the Corporation as arrears or land revenue.*— All sums payable by any person to the Corporation or recoverable by it by or under this Act, and all charges or expenses incurred in connection therewith shall, without prejudice to any other mode of recovery, be recoverable as arrears of land revenue on the application of the Corporation.

40. *Service of notices, etc.*— (1) All notices, orders and other documents required by this Act or any rule or regulation made thereunder to be served upon any person shall, save as otherwise provided in this Act or such rules or regulations be deemed to be duly served—

(a) where the person to be served is a company, the service is effected in accordance with the provisions of section 51 of the Companies Act, 1956 (1 of 1956);

(b) where the person to be served is a firm, if the document is addressed to the firm at its principal place of business identifying it by the name or style under which its business is carried on, and is either—

(i) sent under a certificate of posting or by registered post; or

(ii) left at the said place of business;

(c) where the person to be served is a statutory public body or a corporation or a society or other body, if the document is addressed to the secretary, treasurer or other chief officer of that body, corporation or society at its principal office and is either—

(i) sent under a certificate of posting or by registered post; or

(ii) left at that office;

(d) in any other case, if the document is addressed to the person to be served and—

(i) is given or tendered to him; or

(ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building to which it relates; or

(iii) is sent under a certificate of posting or by registered post to that person.

(2) Any document which is required or authorised to be served on the owner or occupier of any land or building may be addressed to “the owner” or “the occupier” as the case may be, of that land or building (naming that land or building) without further name or description, and shall be deemed to be duly served—

(a) if the document so addressed is sent or delivered in accordance with clause (d) of sub-section (1); or

(b) if the document so addressed or a copy thereof so addressed, is given or tendered to some person on the land or building or, where there is no person on the land or building to whom it can be delivered, is affixed on some conspicuous part of the land or building.

(3) Where a document is served on firm in accordance with this section, the document shall be deemed to be served on each partner.

(4) For the purpose of enabling any document to be served on the owner of any property, the occupier (if any) of the property may be required by notice in writing by the Government or the Corporation, as the case may be, to state the name and address of the owner, thereof.

41. *Public notices how to be made known.*— Every public notice given under this Act or any rules or regulations made thereunder shall be in writing over the signature of the officer concerned and shall be widely made known in the locality to be effected thereby affixing copies thereof in conspicuous public places, within the said locality, or by publishing the same by beat of drum or by advertisement in a local newspaper, or by any two or more of these means, and by any other means that the officer may think fit.

42. *Notices, etc. to fix reasonable time.*— Where any notice, order or other document issued or made under this Act or any rule or regulation made thereunder requires anything to be done for the doing of which no time is fixed by this Act or the rules or regulations, the notice, order or other document shall specify a reasonable period of time for doing the same or complying therewith.

43. *Furnishing of returns etc.*— (1) The Corporation shall furnish to the Government such returns, statistics, reports, accounts and other information with respect to its conduct of affairs, properties or activities or in regard to any proposed work or scheme as the Government may from time to time require.

(2) The Corporation shall in addition to the audit report referred to in section 25 furnish to the Government an annual report on its working as soon as may be after the end of each financial year in such form and detail as may be prescribed, and a copy of the annual report, shall be placed before the Legislative Assembly as soon as may be after it is received by the Government.

44. *Withdrawal of estate or part thereof.*— Where the Government is satisfied that in respect of any particular health estate or any part thereof, the purpose for which the Corporation was established under this Act has been substantially achieved so as to render the continued existence of such estate or part thereof under the Corporation unnecessary, the Government may, by Notification in the Official Gazette, declare that such health estate or part thereof has been

removed from the jurisdiction of the Corporation. The Government may also make such other incidental arrangements for the administration of such health estate or part thereof as the circumstances necessitate.

45. *Default in performance of duty.*— (1) If the Government is satisfied that the Corporation has made a default in performing of any duty or obligation imposed or cast on it by or under this Act, the Government may fix a period for the performance of that duty or obligation and give notice to the Corporation accordingly.

(2) If in the opinion of the Government, the Corporation fails or neglects to perform such duty or obligation within the period so fixed for its performance, it shall be lawful for the Government to supersede and reconstitute the Corporation, as it deems fit.

(3) After the supersession of the Corporation and until it is reconstituted in the manner laid down in Chapter II, the powers, duties and functions of the Corporation under this Act shall be carried on by the Government or by such officer or officers or body of officers as the Government may appoint for this purpose from time to time.

(4) All property vested in the Corporation shall, during the period of supersession, vest in the Government.

46. *Dissolution of Corporation.*— (1) Where the Government is satisfied that the purposes for which the Corporation was established under this Act have been substantially achieved so as to render the continued existence of the Corporation in the opinion of the Government unnecessary, the Government may, by Notification in the Official Gazette, declare that the Corporation shall be dissolved with effect from such date as may be specified in the Notification, and the Corporation, shall be deemed to be dissolved accordingly.

(2) From the said date—

(a) all properties, funds and dues which are vested in, or realisable by, the Corporation shall vest in, or be realisable by, the Government;

(b) all liabilities which are enforceable against the Corporation shall be enforceable against the Government.

47. *Authority for prosecution.*— Unless otherwise expressly provided, no Court shall take cognizance of any offence relating to property belonging to or vested in the Corporation, punishable under this Act, except on the complaint of, or upon information received from the Corporation or some person authorised by the Corporation by general or special order in this behalf.

48. *Composition of offences by Corporation.*— (1) The Corporation or any person authorised by the Corporation by general or special order in this behalf may, either before or after the institution of the proceedings, compound any offence made punishable by or under this Act.

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded.

49. *Offence by companies.*— (1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any Director, Manager, secretary or other officer, then such Director, Manager, secretary or officer, as the case may be, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation— For the purposes of this section—

(a) “company” means any body corporate, and includes a firm or association of individuals; and

(b) “Director”, in relation to a firm, means a partner in the firm.

50. *Penalty for obstruction.*— (1) Any person who obstructs the entry of a person authorised under section 35 or any person with whom the Corporation has entered into a contract in the performance and execution by such person, to enter into or upon any land or building or molests such person after such entry or who obstructs the lawful exercise by him of any power conferred by or under this Act shall, on conviction by a competent court, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) If any person removes any mark set up for the purpose of indicating any level, boundary line, or direction necessary to the execution of works authorised under this Act, he shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to Rs.1000/- or with both.

51. *Power to make rules.*— (1) The Government, after consultation with the Corporation in regard to matters concerning it, may, by Notification in the Official Gazette, make rules to carry out the purposes of this Act:

Provided that, consultation with the Corporation shall not be necessary on the first occasion of the making of rules under this section, but the Government shall take into consideration any suggestions which the Corporation may make in relation to the amendment of such rules after they are made.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) under section 6, the allowances and honorarium of members of the Corporation;

(b) under section 12, the conditions of appointment and service and the scales of pay of the Managing Director and Chief Accounts Officer of the Corporation;

(c) under section 18, the sums of money to be kept by the Corporation in current and deposit accounts;

(d) under section 20, the condition subject to which the Corporation may borrow;

(e) under section 24, the date by which the annual financial statement and programme of work shall be submitted by the Corporation to the Government and the form and manner of preparing such statement;

(f) under section 25, the manner of maintaining accounts;

(g) under section 43, the form of, and the details to be given in, the annual report;

(h) the fees which may be charged by the Corporation;

(i) any other matter which has to be, or may be, prescribed by the rules.

52. *Power to make regulations.*— (1) The Corporation may, with the previous approval of the Government, make regulations consistent with this Act and the rules made thereunder to carry out, the purposes of this Act, and without prejudice to the generality of this power such regulations may provide for:—

(a) under section 7, the time and place of meeting of the Corporation and the procedure to be followed in regard to the transaction of business at such meetings;

(b) under section 12, the conditions of appointment and service and the scales of pay of officers and servants of the Corporation, other than the Managing Director and the Chief Accounts Officer;

(c) under section 18, the officer of the Corporation who may operate its accounts;

(d) under section 29, the manner in which Government lands shall be dealt with by the Corporation after development;

(e) under section 31, the committee of the Corporation to hear appeals under that section and the procedure to be followed by it;

(f) any other matter which has to be, or may be, provided by regulations,

(2) All regulations made under this section shall be published in the Official Gazette and shall be

laid for not less than fourteen days before the Legislative Assembly as soon as possible after they are made, and shall be subject to such modifications as the Legislature may make during the session in which they are so laid, or the session immediately following.

53. *Protection of action taken in good faith.*— No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder.

54. *Notice to suit and limitation of suits against Corporation, Committees, Officers and servants for acts done in pursuance of execution of this Act.*— (1) No suit shall lie against the Corporation or against any committee constituted under this Act, or against any Officer, or servant of the Corporation in respect of any Act done in pursuance or execution or intending execution of this Act, or in respect of any alleged neglect, or default in the execution of this Act,—

(a) unless it is commenced within six months after the accrual of the cause of action; and

(b) until the expiration of two months after the notice in writing has been in the case of the Corporation or its Committee, delivered or left at the Corporation's office and in the case of an Officer or servant of Corporation, delivered to him or left at his office or place of abode and all such notices shall state with reasonable particulars the cause of action and the name and place of abode of the intending plaintiff and of his advocate, pleader, or agent, if any, for the purpose of the suit.

(2) If the defendant in any such suit is an officer, or servant of the Corporation, payment of any sum or part thereof payable by him in or in consequence of the suit may, with the sanction of the Corporation, be made from the funds of Corporation.

55. *Members, officers and staff of Corporation to be public servants.*— All members, officers and servants of the Corporation shall when acting or purporting to act in pursuance of any of the provisions of this Act, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

56. *Power to remove doubts and difficulties.*— If any doubt or difficulty arises in giving effect to the provisions of this Act, the Government may, by order, make provision or give such direction not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for the removal of the doubt or difficulty, and the order of the Government, in such cases, shall be final.

57. *Act to have overriding effect.*— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Goa Municipalities Act, 1968 (Act 7 of 1969); the Goa Panchayat Raj Act, 1994 (Goa Act No.14 of 1994) and the City of Panaji Corporation Act, 2002 (Act 1 of 2003).

Statement of Objects and Reasons

The proposed Legislation provides for establishment of a Goa Health Services Development Corporation to cater the need of rapid growth and development of health services in the State of Goa. It also provides for undertaking various health oriented Schemes on behalf of the Government like the Universal Mediclaim Scheme and to manage, development health estates, health institutions, services, medical tourism at places selected by the Government from time to time. It further provides for undertaking works either jointly or on an agency basis with other Corporate bodies or institutions or with Government and all matters connected therewith.

This Bill seeks to achieve the above objects.

Financial Memorandum

This Bill seeks to provide grants, subventions, loans and advances and capital contribution to Corporation under the Act to be enacted.

All grants, subventions, loans and advances and capital contribution made shall be on such terms and conditions as the State Government may, after consulting the Corporation, determine.

Memorandum Regarding Delegated Legislation

Clause 2(a) of the Bill empowers the Government to specify an amenity by notification in the Official Gazette.

Clause 3(1) of the Bill empowers the Government to establish, by notification in the Official Gazette, the Goa Health Services Development Corporation.

Clause 6(2) of the Bill empowers the Government to frame rules to specify the honorarium and compensatory allowances entitled to the Directors of the Corporation.

Clause 7(1) of the Bill empowers the Corporation to frame regulations providing for the time, place of meetings of Corporation and the rules of procedure in regard to the transaction of its business.

Clause 8(2) of the Bill empowers the Government to frame rules specifying the conditions of appointment and service and scales of pay of the Managing Director and the Chief Accounts Officer of the Corporation.

Clause 12(3) (b) of the Bill provides for framing of regulations by the Corporation to specify conditions of appointment, service and pay scale of other officers and servants of the Corporation.

Clause 18(2) of the Bill empowers the Government to frame rules specifying the sums of money to be kept by the Corporation in current and deposit accounts.

Clause 18(3) of the Bill empowers the Corporation to make regulations authorizing the officers of the Corporation who may operate the accounts of the Corporation.

Clause 20 of the Bill empowers the Government to frame rules to specify the conditions subject to which the Corporation may borrow money.

Clause 24 of the Bill empowers the Government to frame rules specifying the date by which the annual financial statement and programme of work to be submitted by the Corporation and the form and manner of preparing such statements.

Clause 25 of the Bill empowers the Government to frame rules specifying the manner of maintaining accounts of the Corporation.

Clause 29 of the Bill empowers the Corporation to make regulations specifying the manner in which land shall be dealt with by the Corporation after development.

Clause 30 of the Bill empowers the Corporation to make regulations to setup a committee to hear appeal filed under clause 31 and the procedure to be followed to it.

Clause 34 of the Bill empowers the Government to, by notification in the Official Gazette, empower any person to lay down, place, maintain, alter, remove or repair any pipe, pipelines, conduits etc.

Clause 36 of the Bill empowers the Government to nominate, by notification in the Official Gazette, any officer of the Corporation to be a controller or licensing authority under any law.

Clause 38 of the Bill empowers the Government to declare a health estate to be notified area by notification in the Official Gazette.

Clause 43 of the Bill empowers the Government to frame rules specifying the form and details of the annual report.

Clause 44 of the Bill empowers the Government to declare, by notification in the Official Gazette, that Health Estate or part thereof has been removed from the jurisdiction of the Corporation.

Clause 47 of the Bill empowers the Corporation to by general or special order, authorize a person to make complaint or give information of any offence relating to property of the Corporation, to the Government.

Clause 51 of the Bill empowers the Government to frame rules for carrying out the purposes of the Act.

Clause 52 of the Bill empowers the Corporation to frame regulations for carrying out the purposes of the Act.

Clause 56 of the Bill empowers the Government to make order for removing any doubt or difficulty, which arose while giving effect to the provisions of the Act.

These delegations are of normal character.

Assembly Hall,
Porvorim – Goa.
Date: 22nd August, 2008.

SHRI VISHWAJIT RANE
Minister for Health

Assembly Hall,
Porvorim – Goa.
Date: 22nd August, 2008.

R. KOTHANDARAMAN
Secretary

Goa Legislative Assembly.

LA/LEGN/2008/1894

The following bill which was introduced in the Legislative Assembly of the State of Goa on 27-8-2008 is hereby published for general information in pursuance of Rule - 138 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly.

The GOA POLICE BILL, 2008
(Bill No. 39 of 2008)

A
BILL

WHEREAS it is expedient to redefine the role of the police, its duties and responsibilities by taking into account the emerging challenges of policing and security of State, the imperatives of good governance, and respect for human rights; to empower the police personnel to carry out functions as an efficient, effective, people-friendly and responsive agency and for matter connected therewith or incidental thereto.

Be it enacted by the Legislative Assembly of Goa in the Fifty-ninth Year of the Republic of India, as follows:—

CHAPTER - I

Preliminary

1. *Short title, extent and commencement.*— (1) This Act may be called the Goa Police Act, 2008.

(2) It extends to the whole of the State of Goa.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

2. *Definitions.*— (1) In this Act, unless the context otherwise requires,—

(a) “Act” means the Goa Police Act, 2008;

(b) “Cattle” include cows, buffalos, elephants, camels, horses, asses, mules, sheep, goats and swine;

(c) “Chief Secretary” means the Chief Secretary to the State Government;

(d) “Core functions” means duties related to sovereign functions of the State including

arrests, search, seizure, crime investigation, crowd control and allied functions that may only be performed by the police as the agency of the State;

(e) "Cyber Crime" shall mean and include all offences under the Information Technology Act, 2000 (Central Act No.21 of 2000), and any other offences committed by use of electronic devices. Such as, computers, credit cards, internet, ATM, etc.;

(f) "Director General of Police" means the Police officer appointed as such by the State Government for the overall control, supervision and direction of the police;

(g) "District Superintendent of Police" means the police officer in charge of a Police District;

(h) "Domestic help" means a person working for remuneration or otherwise in a household;

(i) "Group 'C' Posts" means the posts so categorized under the relevant State Service Rules;

(j) "Insurgency" includes waging of armed struggle by a group or a section of population against the State with a political objective including the separation of a part from the territory of India;

(k) "Internal Security" means preservation of sovereignty and integrity of the State from disruptive and anti-national forces from within the State;

(l) "Militant activities" include any violent activity of a group using explosives inflammable substances, firearms or other lethal weapons or hazardous substance in order to achieve its political objectives;

(m) "Non-core police functions" mean such functions which are not core functions as defined;

(n) "Moral Turpitude" means to be a conduct, contrary to justice, honesty, modesty, or good moral and contrary to what man owes to a fellowman or to society in general.

(o) "Place of public amusement and public entertainment" include such places as may be notified by the State Government;

(p) "Outpost" means a police post within the jurisdiction of a Police Station;

(q) "Outsource" means procurement of work from or its entrustment to some other agency or persons, outside the police department;

(r) "Police District" means the territorial area notified under section 5 of the Act, as distinct from a revenue district;

(s) "Police Officer" means any member of the Police service of the State;

(t) "Police personnel" shall include police officers and all other persons for whom the appointing authority is the Director General of Police or an officer subordinate to him;

(u) "Police Station" means any area declared to be a Police Station under section 7 of the Act;

(v) "Power of Superintendence" means and includes power of giving directions, guidance and instructions in all administrative matters and includes the power to annul, reverse, rescind or revise any order issued by an authority under the provisions of this Act, subject to the provisions pertaining to investigation as contained in the Criminal Procedure Code, 1973 (Central Act 2 of 1974);

(w) "Prescribed" means prescribed by the rules;

(x) "Public place" means any place to which the public has access;

(y) "Railway Areas" means areas comprised between outermost signals appurtenant to railway tracks including premises of every railway station within the State and shall include trains on tracks, whether moving or stationary, in any area of the State;

(z) "Ranks" shall mean and include subordinate ranks and supervisory ranks;

(za) "Regulations" means regulations made under the Act;

(zb) "Rules" means the rules made under the Act;

(zc) "Special Cell" means a cell created for dealing with a particular category of crime or providing better service to the community including victims of crime;

(zd) "State" means the State of Goa;

(ze) "State Government" means the Government of Goa;

(zf) “Subordinate ranks” means all ranks upto the rank of Inspector of Police;

(zg) “Supervisory ranks” means ranks of Assistant and Deputy Superintendent of Police or above;

(zh) “Tenant”, for the purposes of this Act, means a person to whom a house or premises or part thereof has been let out, whether a lease or any deed has been executed or not;

(zi) “Terrorist activity” includes any activity of a person or a group using explosives or inflammable substances or firearms or other lethal weapons or noxious gases or other chemicals or any other substance of a hazardous nature with the aim to strike terror in the society or any section thereof, and with an intent to overawe the Government established by law.

(2) Words and expressions used in this Act but not defined specially shall have the meaning as provided in the General Clauses Act, 1897 (10 of 1897) the Code of Criminal Procedure, 1973 (2 of 1974), and the Indian Penal Code, 1860 (45 of 1860).

CHAPTER - II

Constitution and Organisation of the Police Service

3. *Constitution of the Police Service for the State.*— (1) There shall be a Police Service for the State.

(2) The Police Service shall consist of such ranks and such number of police officers and have such organisations as the State Government may, by general or special orders, determine and shall include the members of the Indian Police Service, allocated or deputed to the State.

(3) The organisation of the Police Service may include training institutions, research and development bureaux, technical and support services, intelligence and criminal investigation units, and other institutions and units as determined by the State Government from time to time.

(4) The mode of recruitment, pay, allowances and other service conditions of the members of the Police Service shall be such, as may be prescribed.

4. *Police Ranges.*— The State Government, in consultation with Director General of Police, may, by notification, divide the entire territory of the State, into one or more Police Range.

5. *Police Districts.*— The State Government, in consultation with the Director General of Police, may by notification declare any area within the State to be a Police District. The administration of the police throughout such district shall vest in the Superintendent of Police who may be assisted by as many Additional, Assistant or Deputy Superintendents, as deemed necessary and are notified by the Director General of Police.

6. *District Level Special Cells, Sub-Divisions.*— (1) For the purpose of dealing with a particular category of crime or providing better service to the community at large including victims of crime, the State Government may, in consultation with the Director General of Police and by notification, create one or more Special Cells in each Police District, to be headed by an officer of the rank of Assistant/Deputy Superintendent of Police.

(2) The State Government may by notification, divide each Police District into as many sub-divisions as deemed necessary, to be headed by an officer of the rank of Assistant/Deputy Superintendent of Police.

(3) The State Government may by notification, divide each police Sub-Divisions into two or more Sub-Divisions, each headed by an officer of the rank of Inspector or Deputy Superintendent of Police as the case may be:

Provided that in the event of Sub-Division being put under the charge of Deputy Superintendent, such officer shall report directly to the District Superintendent of Police

7. *Police Stations.*— (1) The State Government may, in consultation with the Director General of Police and by notification, create as many Police Stations with as many outposts as necessary, in the police District as deemed necessary, duly keeping in view the population, the area, the crime situation, the workload in terms of law and order and the distance to be traversed by the inhabitants to reach the Police Station.

(2) Two or more Police Stations may be assigned to a police Sub- Division for the purpose of control and supervision.

(3) A Police Station shall be headed by a Station House Officer not below the rank of Inspector of Police.

(4) The State Government shall ensure availability of adequate strength of staff at each Police Station, duly based on the population, incidence of crime, law and order related to workload and the geographical area.

(5) The State Government shall provide, as early as possible, each police station with all essential amenities including a reception-cum-visitors rooms, separate toilets for men and women and separate lock-ups for men and women.

(6) Each Police Station shall have the Women and Child protection desk, staffed as far as possible, by women police personnel to record complaints of crimes against women and children and to deal with the task relating to administration of special legislation relating to women and children.

(7) Each Police Station shall prominently display all the relevant information required to be made public, including the Supreme Court guidelines and direction as also departmental order on arrest and details regarding the person arrested and held in lock-ups.

8. Terms of office of key police functionaries.—

(1) An officer posted as a Station House Officer in a Police Station or as an Officer Incharge of a Police Sub-Division or as the Superintendent of Police of a district shall have a term of minimum of two years:

Provided that any such officer may be removed from his post before the expiry of the minimum tenure of two years consequent upon

- (a) promotion to a higher post; or
- (b) conviction or charges having been framed by a court of law in a criminal offence; or
- (c) punishment of dismissals, removal, discharged or compulsory retirement from service or of reduction to a lower rank awarded under the relevant Discipline and Appeal Rules; or
- (d) suspension from the service in accordance with the provision of the said Rules; or
- (e) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions and duties; or

(f) the need to fill of a vacancy caused by promotion, transfer, or retirement or;

(g) an administrative exigency which shall be recorded in writing.

9. Powers of the District Magistrate in certain cases and Co-ordination within the District Administration.— (1) For the purpose of efficiency in general administration of the district it shall be lawful for the **District Magistrate**, in addition to the provision of the Code of Criminal Procedure, 1973 (2 of 1974) and other relevant Acts, to co-ordinate the functioning of the police with other agencies of district administration in respect of matters relating to the following:—

- (a) the promotion of land reforms and the settlement of the land disputes;
- (b) disturbance of the public peace and tranquility in the district;
- (c) the conduct of election to any public body;
- (d) the handling of natural calamities and rehabilitation of the person affected hereby;
- (e) situation arising out of any external aggression or internal disturbances;
- (f) any similar matter, not within the purview of any one department and affecting the general welfare of the public of the district;
- (g) removal of any persistent public grievance.

(2) For purpose of sub-section (1), the District Magistrate may call for a report regarding the steps taken by the police or other agency to deal with the situation and give such directions in respect of the matter as are considered necessary by him (District Magistrate) to the police and the concerned agency.

10. Railway Police.— (1) The State Government may, by notification in the Official Gazette, create one or more special police districts embracing such railway areas in the State as it may specify, and appoint a Superintendent of Police, one or more Assistant and Deputy Superintendent and such other police officers for each such special district as it may deem fit.

(2) Subject to the control of the Director General of Police, such police officers shall discharge police functions connected with the

administration of railways situated within their respective charges, and such other functions as the State Government may from time to time assign to them.

(3) Any police officer whom the State Government may by general or special order empower to act under this sub-section, may, subject to any orders which the State Government may make in this behalf, exercise within the special district or any part thereof any of the powers of an Officer Incharge of a Police Station in that district. While exercising such powers he shall, subject to any such order as aforesaid, be deemed to be an officer-in-charge of the Police Station discharging the functions of such officer within the limits of his Station.

(4) Subject to any general or special orders which the State Government may make in this behalf, such police officers shall, in the discharge of their functions, be vested within every part of the State, with the powers and privileges and be subject to the liabilities of police officers under this Act or any other law for the time being in force.

(5) The Superintendent of Police may, with the previous permission of the State Government, delegate any of the powers and functions conferred on him by or under this Act, to an Assistant or Deputy Superintendent.

11. *Coastal Security Police.*— (1) The State Government may, by notification in the Official Gazette, create one or more special police districts embracing such coastal areas in the State as it may specify, and appoint a Superintendent of Police, one or more Assistant and Deputy Superintendent and such other police officers for each such special district as it may deem fit.

(2) Subject to the control of the Director General of Police, such police officers shall discharge police functions connected with the administration of coastal areas situated within their respective charges, and such other functions as the State Government may from time to time assign to them.

(3) Any police officer whom the State Government may by general or special order empower to act under this sub-section, may, subject to any others which the State Government may make in this behalf, exercise within the special district or any part thereof any of the

powers of an officer Incharge of a Police Station in that district. While exercising such powers he shall, subject to any such order as aforesaid, be deemed to be an officer-in-charge of the Police Station discharging the functions of such officer within the limits of his Station.

(4) Subject to any general or special orders which the State Government may make in this behalf, such police officers shall, in the discharge of their functions, be vested within every part of the State, with the powers and privileges and be subject to the liabilities of police officers under this Act or any other law for the time being in force.

(5) The Superintendent of Police may, with the previous permission of the State Government, delegate any of the powers and functions conferred on him by or under this Act, to an Assistant or Deputy Superintendent as the case may be.

12. *State Intelligence and Criminal Investigation Departments.*— (1) The State police organisation shall have a State Intelligence Department for collection, collation, analysis and dissemination of intelligence, and a Criminal Investigation Department for investigating inter-state, inter-district crimes and other specified offences, in accordance with the provisions of Chapter V of the Act.

(2) The State Government shall appoint a police officer of the rank of Superintendent of Police to head each of the aforesaid departments.

(3) The Criminal Investigation Department shall have specialised wings to deal with different types of crime requiring focused attention or special expertise for investigation. Each of these wings shall be headed by an officer not below the rank of a Deputy Superintendent of Police.

(4) The State Intelligence Department may have specialised wings, to deal with and co-ordinate specialised tasks such as measures for counter terrorism, counter militancy etc.

(5) The State Government may appoint by, appropriate number of officers as prescribed from different ranks to serve in the Criminal Investigation Department, and the State Intelligence Department, as deemed appropriate with due regard to the volume and variety of tasks to be handled.

13. *Technical and Support Services.*— (1) The State Government shall create and maintain such ancillary technical agencies and services, under the overall control of the Director General of Police, as considered necessary or expedient for promoting efficiency of the Police Service.

(2) (a) The services so created shall include a full-fledged Forensic Science Laboratory at the State-level, and if required, one or more mobile Forensic Science unit with appropriate equipment and Scientific manpower, in keeping with the guidelines laid down by the Directorate of Forensic Science or the Bureau of Police Research and Development of Government of India.

(b) It shall be the responsibility of the State Government to ensure regular maintenance of all scientific equipment and regular replenishment of consumables in the forensic laboratories.

(c) The State Government shall take all measures to encourage and promote the use of science and technology in all aspects of policing.

(3) The State Government may appoint for the whole state or any part thereof, one or more Superintendent of Police Telecommunications, and as many Deputy Superintendents of Police as deemed necessary to assist them.

(4) The State Government may similarly appoint for the whole State or any part thereof, one or more Superintendent of Police Transport, and as many Deputy Superintendents of Police as deemed necessary to assist them.

(5) The State Government shall ensure regular maintenance of all the needed equipment and regular replenishment of consumables for the Police Tele-communications and the Police Transport Services.

14. *Appointment of Principals of Police Training School and College.*— (1) The State Government shall establish a full-fledged Police Training School at the State level and if required, a Police Training College for ensuring efficient post induction training of all directly-recruited police personnel in various ranks, pre-promotion training for all those promoted to higher levels and such thematic and specialised in-service training courses for police personnel of different ranks and categories as deemed necessary from time to time.

(2) The State Government may subject to rules made in this behalf appoint any police officer not below the rank of Superintendent of Police as the Principal of Police Training School and an officer not below the rank of Deputy Inspector General of Police to head Police Training College if established.

(3) The State Government shall also provide for appointment of appropriate number of officers as prescribed from the Police Service, in the Police Training School and College, if established, after careful selection having due regard to aptitude, academic qualifications, professional competence, experience and integrity. The State Government shall evolve a scheme of monetary and other incentives to attract and retain the best of the available talent in the Police Service to the faculties of such training institutions.

(4) The State shall also ensure appointment of persons with academic accomplishments in the fields of law, sociology, psychology, criminology, forensic science and other academic subjects relevant to police profession to the permanent faculty positions in these training institutions.

15. *Organization of research.*— The State Government may set up such bodies and take up such other steps as considered necessary or expedient for the purpose of undertaking research into matters relating to the efficiency of the Police Service.

16. *Training-cum-Education Policy for the Police.*— The State Government shall lay down a Training-cum-Education Policy covering all ranks and categories of police personnel. This Policy shall ensure that all police personnel are adequately trained to perform their job taking due care of proper attitudinal development, and shall be linked to career development scheme of police personnel in different ranks and categories.

17. *Career Planning.*— The State Government shall formulate a policy for career progression of police personnel in a manner that will ensure avenues for at least three promotions to meritorious officers in their career, through a transparent process.

18. *Oath or affirmation by police personnel.*— Every member of the Police Service enrolled under this Act shall, on appointment and completion of training, make and subscribe before the Superintendent of Police or Director General

of Police, or another officer appointed in that behalf by him, as the case may be, an oath or affirmation, as prescribed.

19. *Certificate of appointment.*— (1) Every police officer of or below the rank of Inspector shall on appointment receive an insignia and a certificate in the form as prescribed. The certificate shall be issued under the hand and seal of such officer as the State Government may by general or special order direct.

(2) The certificate of appointment shall become null and void and the insignia shall be deemed to be withdrawn whenever the person named there in ceases to belong to the police service or shall remain in operative during the period such person is suspended from the service.

20. *Special Police Officers.*— (1) Subject to rules made in this behalf, the Director General of Police may, by an order in writing, appoint any person to act as a Special Police Officer for a specified area, for a period as specified in the appointment order.

(2) Every special police officer so appointed shall have such powers, privileges and protection, and shall be liable to perform such duties and shall be amenable to such penalties, and be subordinate to such authorities, as may be prescribed.

CHAPTER - III

Control, Supervision and Direction of the Police Force

21. *Superintendence over the Police Force.*— The powers of Superintendence over the Police Service in respect of all matters shall vest in the State Government.

22. *Director General of Police.*— (1) In accordance with the orders of the Central Government, the State Government shall appoint a Director General of Police for the overall control, supervision and direction of the Police Service. He shall exercise such powers, perform such functions and discharge such duties, and have such responsibilities, as may be prescribed.

(2) Subject to the rules made under All India Services Act, 1951 (Central Act No. 61 of 1951), the Director General of Police so appointed shall have a minimum tenure of two years.

(3) The State Government may appoint one or more Inspector General of Police, Deputy

Inspector General of Police and Superintendent of Police to assist the Director General of Police, and determine, in consultation with Director General of Police, the functions, duties, responsibilities and powers of such officers.

23. *Strategic Policing Plan and Annual Policing Plan.*— (1) The State Government shall;

(a) in consultation with the State Police Commission draw up a Strategic Policing Plan for a five-year period (hereinafter referred to as the "Strategic Plan"), duly identifying the objectives of policing sought to be achieved during the period and setting out an action plan for their implementation;

(b) place before the State Legislature, within three months of the coming into force of this Act, the Strategic Plan. Subsequent Strategic Plans shall, thereafter, be laid before the State Legislature every three years.

(c) place before the State Legislature, at the beginning of each financial year, a Progress Report on the implementation of the Strategic Plan as well as an Annual Policing Plan (Annual Plan for short) that prioritises the goals of the Strategic Plan for the year in question.

(2) The Strategic and the Annual Plans shall be prepared after receiving inputs on the policing needs of the districts from the District Superintendents of Police who, in turn, shall formulate the same in consultation with the community.

(3) The Strategic Plan, the Progress Report and the Annual Plan shall be made readily accessible to the public.

24. *Control, Supervision and Direction of Police Force in a Police Range.*— (1) The State Government shall appoint an officer not below the rank of Deputy Inspector General of the Police to be in-charge of a Police Range.

(2) The power of control, supervision and direction of the Police Service in a Police Range shall, subject to the overall control of the Director General of Police, vest in the officer in-charge of the Police Range.

(3) Subject to the rules made under All India Services Act, 1951 (Central Act No. 61 of 1951),

the Officer in-charge of Police Range so appointed shall have a minimum tenure of two years.

(4) Notwithstanding anything in sub-section (3), the officer in-charge of Police Range may be removed from his post before the expiry of the said tenure by the State Government consequent upon:—

(a) his conviction by the court in a criminal offence or where charges have been framed by the court in a case involving corruption or moral turpitude;

(b) his punishment of dismissal, removal, or compulsory retirement from service or of reduction to a lower rank, awarded under the provisions of the All India Services (Discipline and Appeal) Rules, 1969 or any other relevant rules;

(c) his suspension from service in accordance with the provisions of the rules referred to in clause (b);

(d) his incapacity in the discharge of functions due to physical or mental illness;

(e) his own request; or

(f) an administrative exigency which shall be recorded in writing.

25. Control, Supervision and Direction of Police Force in a Police District.— (1) The State Government may appoint a District Superintendent of Police for a Police District.

(2) The power of control, supervision and direction of the Police Service in a Police District shall, subject to the overall control of the Director General of Police, vest in the District Superintendent of Police.

(3) Subject to the rules made under All India Services Act, 1951 (Central Act No. 61 of 1951), the District Superintendent of Police shall have a minimum tenure of two years.

(4) Notwithstanding anything in sub-section (3), The District Superintendent of Police may be removed from his post before the expiry of the said tenure by the State Government consequent upon:—

(a) his conviction by the court in a criminal offence or where charges have been framed

by the court in a case involving corruption or moral turpitude;

(b) his punishment of dismissal, removal, or compulsory retirement from service or of reduction to a lower rank, awarded under the provisions of the All India Services (Discipline and Appeal) Rules, 1969 or any other relevant rules;

(c) his suspension from service in accordance with the provisions of the rules referred to clause (b);

(d) his incapacity in the discharge of functions due to physical or mental illness;

(e) his own request; or

(f) an administrative exigency which shall be recorded in writing;

(5) The State Government may appoint one or more Additional, Deputy or Assistant Superintendent of Police to assist the District Superintendent of Police.

(6) The powers, functions and duties of police officers appointed under sub-section (5) shall be as may be determined by the Director General of Police by general or special order.

26. Control, Supervision and Direction of Police Force in a Police Sub-Division.— (1) The State Government may appoint an officer not below the rank of Deputy Superintendent of Police to be the In-charge of a Sub-Division.

(2) The power of control, supervision and direction of the Police Service in a Police Sub-Division shall, subject to the overall control of the Director General of Police, vest in the Police Officer of the Sub-Division.

(3) The in-charge of Police Sub-Division shall have a minimum tenure of two years.

(4) Notwithstanding anything in sub-section (3), In-charge of Police Sub-Division may be removed from his post before the expiry of the said tenure by the State Government consequent upon:—

(a) his conviction by the court in a criminal offence or where charges have been framed by the court in a case involving corruption or moral turpitude;

(b) his punishment of dismissal, removal, or compulsory retirement from service or of reduction to a lower rank awarded under the provisions of the relevant laws;

(c) his suspension from service in accordance with the relevant laws;

(d) his incapacity in the discharge of functions due to physical or mental illness;

(e) his own request; or

(f) an administrative exigency which shall be recorded in writing;

27. Supervision of Police Force in Railway Areas.— (1) The State Government may appoint an officer in the rank of Superintendent of Police to be in-charge of the Railway Areas.

(2) The power of control, supervision and direction of the Police Force in the Railway Areas shall, subject to the overall control of the Director General of Police, vest in the Superintendent of Police, in-charge of the Railway Areas.

28. Tenure of office of certain police officers on field duties.— (1) A police officer posted as an Officer-in-charge of a Police Station shall have a minimum tenure of two years.

(2) Notwithstanding anything in sub-section (1), any officer referred to in that sub-section may be transferred from his post before the expiry of the said tenure, consequent upon:—

(a) his promotion to a higher post;

(b) his superannuation;

(c) his conviction by the court;

(d) charges having been framed against him by the court in a criminal offence;

(e) punishment of dismissal, removal, discharge or compulsory retirement from service or of reduction to a lower rank awarded to him under the rules relating to disciplinary actions taken against him;

(f) his suspension from service in accordance with the provisions of the rules referred to in clause (e);

(g) his incapacity in the discharge of functions and duties due to physical or mental illness;

(h) for filling up a vacancy;

(i) his own request; or

(j) an administrative exigency which shall be recorded in writing.

29. Regulation of recruitment and condition of services of police officers in subordinate ranks.—

(1) The State Government may make rules for the regulation of recruitment and conditions of service of police officers in subordinate ranks.

(2) Subject to the provisions of Article 311 of the Constitution of India and the Disciplinary Rules framed by the State Government, the Director General of Police or any other police officer authorised by the State Government in this behalf may suspend, dismiss, remove from service, reduce in rank, any police officer of subordinate ranks found to be remiss or negligent in the discharge of his duties or unfit for the same, or guilty of any misconduct.

CHAPTER - IV

State Police Commission and Police Establishment Board

30. State Police Commission.— (1) The State Government shall establish a State Police Commission (hereinafter referred to as the “Commission”), which shall perform functions assigned to it under the provisions of this Chapter.

(2) Minister-in-charge of the Home Department shall be the Chairman of the Commission and other members of the Commission shall be as follows:—

(a) Leader of the Opposition in the State Legislative Assembly or if there is no Leader of the Opposition, the leader of the largest opposition party (single or group of parties recognized by the Speaker) in the State Legislative Assembly;

(b) Chief Secretary;

(c) Secretary-in-charge of the Home Department;

(d) Director General of Police; and

(e) Three persons of eminence (hereinafter referred to as “Independent Members”) from any walk of public life to be appointed by the State Government;

Provided that atleast one independent member shall be from amongst the weaker sections of society.

(3) The State Government may appoint a police officer not below the rank of Inspector General of Police to act as the Secretary to the Commission.

(4) The Commission shall follow such rules with regard to its meetings, quorum and transaction of business as prescribed.

31. *Committee for selection of Independent Members.*— There shall be a panel of Committee for selection of independent Member. The State Government shall appoint independent Member on the recommendation of a panel consisting of the Chief Minister as its Chairman and the following as its members:

(a) Leader of the Opposition in the State Legislative Assembly or if there is no Leader of the Opposition, the leader of the largest opposition party (single or group of parties recognized by the Speaker) in the State Legislative Assembly;

(b) Minister-in-charge of the Home Department;

(c) Chairman, State Human Rights Commission or in the event of there being no such Commission in the State, the 'Lokayukta'

(d) Chief Secretary

32. *Disqualification for appointment as Independent Member.*— A person shall not be eligible to be appointed as an Independent Member of the Commission, if he-

(a) is not a citizen of India;

(b) has been convicted by the court or against whom charges of an offence involving moral turpitude have been framed by the court;

(c) has been dismissed, removed or compulsorily retired from any public service;

(d) has been declared insolvent by the court; or

(e) is of unsound mind; or

(f) is or has been a Member of Parliament or the Legislature of a State or a local body; or is or has been an office-bearer of any political

party or any organisation connected with a political party; or is or has been a member of any political party or any organisation affiliated to a political party.

33. *Term and privileges of Independent Members.*— (1) The term of an independent member shall be for a period of three years from the date of his appointment and he shall not be eligible for re-appointment.

(2) An independent member shall serve in an honorary capacity and the privileges and facilities to be extended to such member shall be such as may be prescribed.

34. *Removal of an Independent Member.*— State Government may remove an independent member before the expiry of his tenure, consequent upon—

(a) (i) failure to attend three consecutive meetings of the Commission without sufficient cause;

(ii) incapacitation by reasons of physical or mental infirmity; or

(iii) otherwise becoming unable to discharge his functions as a member.

(b) on the recommendation of the selection committee referred to in Section 31.

(c) if he incurs any disqualification specified in Section 32.

35. *Functions of the Commission.*— The Commission may perform the following functions, namely:—

(a) to advise the State Government on policy guidelines for promoting efficient and accountable policing;

(b) to assist the State Government in identifying performance indicators to evaluate the functioning of the Police Service;

(c) to communicate its views periodically on the performance of the Police Service;

(d) to formulate perspective plans for policing and submit them to the State Government;

(e) to analyse crimes in the State and suggest preventive measures;

(f) to draw up a strategic plan for a five year period, duly identifying the objectives of policing sought to be achieved during the period and setting out an action plan for their implementation;

(g) to perform such other functions as specified by the State Government from time to time.

36. *Annual report of the Commission.*— (1) The Commission shall, at the end of each financial year, present to the State Government a report of its work during the preceding year as well as of the performance of the Police Service.

(2) The State Government shall cause the annual report to be laid before the House of the State Legislature in the Budget Session.

37. *Police Establishment Board.*— (1) The State Government shall constitute a Police Establishment Board (hereinafter referred to as the “Board”), with the Director General of Police as its Chairman and officer of the rank of Superintendent of Police and above as its members.

(2) The Board shall perform the following functions:—

(a) recruitment of Constables in accordance with the relevant service rules;

(b) promotion in the subordinate ranks (Head Constables to Inspector of Police) in accordance with relevant service rules;

(c) specify guidelines for transfer of subordinate ranks with the approval of State Government;

(d) prepare proposal for transfer of police officers in the rank of Deputy Superintendent of Police and above and submit the same to the State Government; and

(e) analyze the grievances of police personnel and suggest remedial measures to the State Government.

(3) For recruitment of constables and for promotion in the subordinate ranks (Head

Constables to Inspector of Police), the Board may appoint one or more Committees headed by an officer not below the rank of Inspector General of Police.

(4) The Police Establishment Board shall follow such procedure with regard to its meetings, quorum and transaction of business as prescribed by the State Government.

(5) The transfer of lower subordinates (Constables & Head Constables) within in the unit shall be decided by the concerned Superintendents of Police subject to approval of DIG and/or IG.

(6) The transfer of upper subordinates (ASIs & PSIs) shall be decided by DIG and/or IGP.

(7) Transfer of Police Inspectors shall be decided by the Director General of Police.

(8) The transfer of Dy. Superintendent of Police and above shall be considered by the State Government in consultation with Director General of Police.

CHAPTER - V

Functions, Duties and Responsibilities of Police Officers

38. *Functions, Duties and responsibilities of police officers.*— (1) The functions, duties and responsibilities of a police officer shall be as follows:—

(a) to uphold and enforce the law impartially and to protect life, liberty, property, rights, dignity and human rights of the people;

(b) to prevent crime and public nuisance;

(c) to maintain public order;

(d) to preserve internal security, prevent and control terrorist activities, and to prevent breach of public peace;

(e) to protect public property;

(f) to detect offences and bring the offenders to justice;

(g) to apprehend persons whom he is legally authorised to apprehend and for whose apprehension sufficient grounds exist;

(h) to help people in situations arising out of natural or man-made disasters, and to assist other agencies in relief measures;

(j) to facilitate orderly movement of people and vehicles, and to control and regulate traffic;

(j) to gather intelligence relating to matters affecting public peace and crime;

(k) to provide security to public authorities in discharging their functions and duties; and

(l) to perform such duties and discharge such responsibilities as may be enjoined upon him by law or by an authority empowered to issue such directions under any law.

(2) The State Government, or an authority specially empowered in this behalf by the State Government, may assign such other duties and responsibilities to police officers as may be specified by the State Government.

39. *Social responsibilities of the police officers.*— Every police officer shall:

(a) behave with the members of the public with due courtesy and decorum, particularly so in dealing with senior citizens, women, children and members of weaker sections of society;

(b) guide and assist members of the public, particularly senior citizens, women, children, and the physically or mentally challenged individuals, who are found in helpless condition on the streets or other public places;

(c) provide requisite assistance to victims of crime and of road accidents;

(d) prevent harassment of senior citizens, women and children in public places and public transport including stalking, making objectionable gestures, signs, remarks or harassment caused in any way;

(e) render lawful assistance to the members of the public, particularly women, children, and members of weaker section of society.

Explanation.— “senior citizen” means a person of and above the age of sixty years.

40. *Powers and Responsibilities of the Director General of Police.*— Subject to the approval of the State Government, the Director General of Police shall make rules, regulations or issue orders, not inconsistent with this Act or with any other enactment for the time being in force for:

(a) prevention and investigation of crime;

(b) maintenance of law and order;

(c) regulation and inspection of the police organisation, and of the work performed by police officers;

(d) determining the description and quantity of arms, accoutrements, clothing and other wherewithal to be provided to the Police Service;

(e) prescribing the places of residence of members of the Police Service;

(f) institution, management and regulation of any non-government fund for purposes connected with the police administration or welfare of police personnel;

(g) regulation, deployment, movements and location of the police;

(h) assigning duties to officers of all ranks and grades, and prescribing the manner and the conditions subject to which, they shall exercise and perform their respective powers and duties;

(i) regulating the collection and communication of intelligence and information by the police;

(j) specifying the records, registers and forms to be maintain and the returns to be submitted by different police units and officers; and

(k) generally, for the purpose of rendering the police more efficient and preventing abuse of power and neglect of duties by them.

41. *Duties in emergency situation.*— (1) The State Government may, by notification in the Official Gazette, declare any specified service to be an essential service to the community, for a specified period, which may be extended from time to time, by a notification, as necessary.

(2) Upon a declaration being made under sub-section (1) and so long it remains in force, it shall be the duty of every police officer to obey any order given by any officer superior to him in connection with the service specified in the declaration.

42. *Senior police officer performing duties of a subordinate police officer.*— A senior police officer may perform any duty assigned by law or by a lawful order to any officer subordinate to him

and in case of any duty imposed on such subordinate, a superior officer may aid, supplement, supersede or prevent any action of such subordinate by his own action or that of any person lawfully acting under his command or authority, whenever the same shall appear necessary or expedient for giving more complete or convenient effect to the law or for avoiding any infringement thereof.

43. *Police officer always on duty.*— Every police officer shall be considered to be always on duty for all purposes of this Act.

44. *Police officers may be deployed in any part of the State.*— Notwithstanding anything contained in any other law or any of the provisions of this Act, members of the Police Service shall be liable for posting anywhere in the State and outside the State, as may be ordered by the Director General of Police or any other officer authorized by the State Government.

45. *Police officers not to engage in other employment.*— No police officer shall engage in an employment or office whatsoever, other than his duties under this Act, unless expressly permitted to do so in writing by the State Government.

46. *Police officers not to withdraw from duty.*— No police officer shall be at liberty to withdraw himself from duties of his office unless expressly allowed to do so by an officer authorised to grant such permission.

47. *Police officers to take charge of unclaimed property.*— (1) It shall be the duty of every police officer to take charge of unclaimed property, and to furnish an inventory thereof to the Police Station having jurisdiction.

(2) The manner of disposal of such property shall be such as may be prescribed.

Explanation.— For the purposes of this section, “property” shall mean any movable property, money or valuable security.

48. *Police Stations diary.*— It shall be the duty of every officer in-charge of a police station or an outpost to keep a general diary in such form and manner as may be prescribed.

49. *State Government may prescribe form of returns.*— (1) The State Government may prescribe the forms and the manner of returns to be submitted to it by the Director General of Police.

(2) The Director General of Police may specify the forms and manner of returns to be furnished to him by other police officers.

50. *Uniforms, insignia, accoutrements, etc.*— (1) The State Government may prescribe uniform, insignia and accoutrements for police officers or as the case may be, a class of police officers.

(2) The Director General of Police may, from time to time, issue directions for wearing of uniforms and carrying of insignia and accoutrements.

CHAPTER - VI

Policing in the Context of Public Order and Internal Security Challenges

51. *Internal Security Schemes.*— (1) The Director General shall, with the approval of the State Government, draw up an Internal Security Scheme for the entire State as well as for each of the districts to deal with problems of Public Order and Security of State as a whole or for any area or areas.

(2) The Internal Security Scheme shall be updated regularly by incorporating therein, the latest comprehensive standard operating procedures for the action, to be taken by the police either independently or in co-ordination with other agencies in the period, before, during and after the occurrence of problems of each kind.

52. *Creation of Security Zones and Operating Procedures.*— (1) As and when, the security of the State in any area is threatened by insurgency or any terrorist or militant activity whether by any organized crime group or otherwise, the State Government may, by notification in the Official Gazette, declare such an area as a special Security Zone:

Provided that such notification shall be placed before the State Legislature, within a period of six months from the date of issue or the first sitting of the Legislature, whichever is earlier.

(2) For a Special Security Zone, as declared under sub-section (1), the State Government may, create an appropriate Police structure providing for such zone, a suitable command, control and response system.

(3) The Director General of Police shall with the concurrence of the State Government, issue orders, laying down standard operating

procedures, to be followed by the police in a Special Security Zone.

(4) The State Government may, on the recommendation of the Director General of Police, and for reasons, to be recorded in writing, ban or regulate the production, sale, storage, possession or entry of any devices, or equipment, or any explosive, poisonous, chemical biological or radioactive articles or substances, or any inflow of funds, in a Special Security Zone, if the use of such devices, equipment, material article or inflow of funds, is reasonable considered a threat to internal security or public order in the area, in any manner.

53. *Measures to be taken.*— The measures to be taken to prevent and control the activities of persons or organizations having impact on internal security or public order in any special Security Zone shall be such as may be prescribed.

CHAPTER - VII

Special Provisions for Policing

54. *Separation of Crime Investigation and Law and Order.*— (1) The State Government may, by general or special order, create in each such Police Station, as it may decide from time to time, a separate Crime Investigation Unit, headed by an officer not below the rank of Sub-Inspector of Police, under the overall supervision and control of the officer in-charge of the Police Station.

(2) The State Government may, by general or special order, create in office of the Director General of Police or in any police district, one or more Special Crime Investigation Units headed by an officer not below the rank of Inspector of Police, for investigation of cyber crimes, organised crimes and such other offences as may be specified by the Director General of Police by general or special order.

(3) The police officers posted to such units shall not be assigned to any other duty, except under very special circumstances with the permission of the Director General of Police.

55. *Power to reserve public places and raise barriers.*— Subject to such checks and restrictions as may be specified by the District Magistrate.—

(a) The District Superintendent of Police may temporarily reserve, by public notice, any street or other public place for any public purpose, and regulate the movement of persons and vehicles in the area so reserved; and

(b) The District Superintendent of Police may, in the interest of general public, authorise any police officer to raise barriers and other necessary structures on public roads and streets for maintenance of public order or to check vehicles or occupants thereof for prevention or detection of any crime.

56. *Preservation of order.*— (1) Subject to such checks and restrictions as may be specified by the District Magistrate, the District Superintendent of Police or any police officer authorised by him for this purpose, may issue general or special orders for regulating all assemblies and processions on public roads, or in public streets or thoroughfares and prescribe the routes by which, and the times at which, such processions may pass:

Provided that where the District Superintendent of Police or the officer authorized by him is satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to form a procession which would, if uncontrolled, be likely to cause a breach of the peace, he may direct such persons or class of persons to seek permission from the District Magistrate or any officer authorised by him for this purpose.

(2) The District Magistrate or the officer authorised by him, may grant the requisite permission with such conditions as he may deem appropriate:

Provided that he may refuse to grant permission to convene or collect an assembly in any such road, street or thoroughfare, or form a procession which would, in his opinion, be likely to cause a breach of the peace.

(3) Any police officer on whom the responsibility to regulate a public assembly or a procession is enjoined upon, may stop any procession which does not possess the permission referred to in sub-section (2) or which, in his opinion/violates the conditions of the permission and may order any such procession or any such assembly to disperse.

(4) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section, shall be deemed to be an unlawful assembly.

(5) The District Superintendent of Police may, in the interest of general public, issue orders for

regulating the entry or exit or hours of operation of a public place.

57. *Power to seek information.*— The District Superintendent of Police may, by an order, require every owner of a household, a shop, or hotel or a guest house, a public premise, to furnish details of a tenant or occupant tourist or domestic help in the format specified by him for this purpose or such other information as may be prescribed.

58. *Payment for police service.*— The State Government may levy from any person, who carries on any such occupation, gathering, exhibition, sale, entertainment, etc., for monetary gain, as may, for the purpose of public security or for the maintenance of public peace or order, require deployment of additional police force, such user charges as may be prescribed.

59. *Regulation of Traffic.*— The District Superintendent of Police or any officer specially authorized by the State Government for management of traffic in any area may, from time to time, issue directions for regulating the use of public roads and streets in respect of motorists, cyclists, pedestrians and persons accompanying animals, and for regulating the parking of vehicles including bicycles, with a view to ensure smooth and orderly movement of traffic.

60. *Community Liaison Group.*— (1) The District Superintendent of Police shall constitute, in the manner prescribed, one or more Community Liaison Group consisting of representatives of the community for each Police Station, to aid and assist the Police Service in the discharge of its functions;

(2) Community liaison group shall perform functions and have responsibilities as may be prescribed.

CHAPTER - VIII

Welfare and Grievance Redressal

61. *Welfare of Police Personnel.*— The State Government may, by general or special order, specify such measures as deemed appropriate, for the welfare of police personnel.

62. *Funds for the welfare of police personnel.*— (1) The State Government may, by notification, constitute funds for the purpose of welfare of police personnel and their dependents.

(2) The funds shall be utilized, administered and audited in such manner as may be prescribed.

(3) The following sums shall be credited to the funds, namely;—

(a) any grant made by the State Government;

(b) contributions made in the fund by police personnel;

(c) any other grant, donation, bequest made for the purposes of the funds.

63. *Police Welfare Board.*— (1) The State Government may, by notification, set up a Police Welfare Board for implementing welfare measures for police personnel.

(2) Composition, functions and responsibilities of the Police Welfare Board shall be such as may be prescribed.

64. *Grievance redressal of police personnel.*— (1) The State Government shall prescribe the mechanism and the procedure for the redressal of the grievances of police officers.

(2) Such mechanism shall ensure a set-up for grievance redressal at the Police District/Unit, Police Range/Unit and Director General of Police level and shall ensure that every police officer has the right of at least one appeal, if he is not satisfied with the disposal of his grievance.

CHAPTER - IX

General Offences and Penalties

65. *Regulation of public assemblies and processions.*— (1) The District Superintendent of Police or an officer not below the rank of Assistant/Deputy Superintendent of Police may, where necessary, direct the conduct of all assemblies and processions on any public road, street or thoroughfare, and prescribe the routes by which and the time at which such a procession may pass.

(2) It shall be duty of any person intending to organize a procession on any road, street or thoroughfare, or to convene an assembly at any public place, to give intimation in writing to the officer in charge of the concerned Police Station.

(3) The District Superintendent or any officer not below the rank of Assistant/Deputy Superintendent of Police, on receipt of such

intimation or otherwise, and upon being satisfied that such an assembly or procession, if allowed without due control and regulation, is likely to cause a breach of peace, may prescribe necessary conditions including making provisions for satisfactory regulatory arrangements, on which alone such assembly or procession may take place. Under special circumstances to be recorded in writing, the concerned officer may also prohibit the assembly or procession in public interest. All orders and directions should be given within 48 hours of receipt of intimation, as far as possible.

66. *Assemblies and processions violating prescribed conditions.*— (1) The District Superintendent of Police or any Police Officer not below the rank of Sub-Inspector, authorized in this behalf by the District Superintendent of Police, may stop any assembly or procession which violates the conditions set under sub-sections (1) and (3) of section 65, and order such assembly or procession to disperse.

(2) Any assembly or procession which neglects or refuses to obey any order given under sub-section (1) above shall be deemed to be an “unlawful assembly” under Chapter VIII of the Indian Penal Code, 1860 (45 of 1860).

67. *Regulation of the use of music and other sound systems in public places.*— The District Superintendent or any officer not below the rank of Assistant/Deputy Superintendent of Police may regulate the time and the volume at which music and other sound systems are used in connection with any performances and other activities in or near streets or any public place that cause annoyance to the residents of the neighbourhood.

68. *Directions to keep order on public roads.*— (1) The District Superintendent of Police or any other Police Officer authorized by him in this behalf, through a general or special order, may give reasonable directions to the public to keep order on public roads and streets, thoroughfares, or any public place, in order to prevent obstruction, injury, or annoyance to passers-by or pollution.

(2) The District Superintendent of Police may issue general directions under sub-section (1), in respect of the whole district or any part thereof, as per procedure laid down in section 78.

69. *Penalty for disobeying orders or directions.*— Any person not obeying the lawful orders issued under sections 65, 66 and 68 may

be arrested and on conviction by a court of law, shall be liable to a fine which may extend upto rupees ten thousand.

70. *Power to reserve public places and erect barriers.*— (1) The District Superintendent of Police may, by public notice, temporarily reserve for any public purpose any street or other public place, and prohibit the public from entering the area so reserved, except on such conditions as may be specified.

(2)(a) The District Superintendent of Police may authorize any police officer to erect barriers and other necessary structures on public roads and streets, to check vehicles or occupants thereof for any legal provisions by them.

(b) In making such order, the District Superintendent of Police shall prescribe the necessary steps for ensuring the safety of passers-by.

(c) These temporary structures shall be removed once the purpose for which they were installed is over.

71. *Saving of control of Magistrate of the District.*— Notwithstanding anything contained in this chapter, nothing shall be deemed to have interfered with the general control of the Magistrates of the District on the matters assigned to them under any law for the time being in force.

Offences against the police

72. *Obstruction in police work.*— Any person, who obstructs the discharge of duties and functions of a police officer, shall, on conviction, be liable to simple imprisonment not exceeding three months or fine which may extend upto rupees ten thousand or both.

73. *Unauthorized use of police uniform.*— Whoever, not being a police personnel, wears a police uniform or any dress having the appearance or bearing any of the distinctive marks of that uniform without authorization from the State Government or as the case may be, from an officer authorized by the State Government, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

74. *Refusal to deliver up certificate etc. on ceasing to be police officers.*— Whoever, having

ceased to be a police officer, does not forthwith deliver up his/her certificate of appointment, clothing, accoutrements and other wherewithal supplied to him for the execution of his duty, shall on conviction by a court of law, be liable to a fine which may extend upto rupees ten thousand and incase of continuing offence, shall be punished with imprisonment not exceeding three months.

75. False or misleading statement made to the police.— Whoever makes a false statement or a statement which is misleading in material particulars to a police officer for the purpose of obtaining any benefit shall, be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

76. Offences by the police.— Whoever, being a Police Officer:—

(a) intentionally abdicated duties or withdraws from duties; or

(b) uses criminal force against another police officer, or indulges in gross insubordination;

(c) engages himself or participates in any demonstration, procession or strike, or resorts to, or in any way abets any form of strike, or uses physical force to compel any authority to concede anything; or

(d) is guilty of sexual harassment in the course of duty, whether towards other police officers or any member of the public

shall on conviction by court, be punished with imprisonment for a term, which may extend to one year or with a fine, not exceeding ten thousand rupees or with both.

Offences by public on roads

77. Punishment for certain offences pertaining to public nuisances.— (1) Any person who, on any road or in any open place or street or thoroughfare within the limits of any town to which this section shall be specially extended by the State Government commits any injury, danger, indecent exposure of his person, obstruction, inconvenience, annoyance to persons, risk, danger or damage of the residents or passengers, shall be punished with fine which may extend to two hundred rupees.

(2) Where any act or omission constitute the following offences under this Act and also under

any other Act, then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

(i) *Slaughtering cattle.*— Any person who slaughters cattle shall be punishable on conviction with fine which may extend to five hundred rupees, or with imprisonment which may extend to three months, or with both.

(ii) *Cruelty to animals.*— Any person who wantonly or cruelly beats, abuses or tortures any animal, shall be punishable in case of first offence with fine which shall not be less than ten rupees but extend to fifty rupees and incase of subsequent offences committed within three years of the previous offence, with fine which shall be not less than twenty five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both.

(iii) *Throwing dirt into street.*— Any person who throws or lays down any dirt, filth, rubbish or who causes any offensive matter to run from any house, factory, dung heap or the like; or put up on any street, open space, shall be punished with fine which may extend to five thousand rupees.

(iv) *Being found drunk or riotous.*— Any person who is found drunk or riotous or who is incapable of taking care of himself shall be punished with simple imprisonment for a term which may extend to twenty four hours, or with fine which may extend to ten rupees or with both;

Procedural matters

78. Procedure for posting directions and public notices.— (1) All general directions, regulations, and public notices issued under this Chapter shall be published by posting notices in the office of the District Magistrate, Mamlatdar office, Municipal office, Police station and Panchayat office of the local area as well as in the locality affected, by affixing copies in conspicuous places near the building or place to which the notice specially relates, or by announcing it by the beating of drum or by advertising in local newspapers and other media, or by any other means as the Superintendent of Police may deem fit:

Provided that the Superintendent of Police may, on being satisfied that it is in public interest to

bring any regulation into force with immediate effect, make such direction or regulation without previous publication.

(2) If any direction or regulation made under this section relates to any matter with respect to which there is a provision in any law, rule or by-law of the Corporation or of any other Municipal or Local Authority in relation to public health, convenience or safety of the locality, such regulation shall be subject to such law, rules, or by-laws.

79. Method of proving orders and notifications.— Any order or notification published or issued by the State Government or by a Magistrate or officer under any provision of this Act, and the due publication or issue thereof may be proved by the production of a copy thereof in the Official Gazette, or of a copy thereof signed by such Magistrate, or officer, and certified by him to be a true copy of an original published or issued according to the provisions of the section of the Act applicable thereto.

80. Validity of rules and order.— No rule, regulation, order, direction, or notification made or published and no adjudication, inquiry or act done under any provision of this Act, or under any rules made thereunder, which is in substantial conformity with the same, shall be deemed illegal, void or invalid by reason of any defect in form.

81. Officers holding charge of or succeeding to vacancies competent to exercise powers.— Whenever in consequence of the office of a Magistrate or police officer becoming vacant, any officer holds charge of the post of such Magistrate, or police officer or succeeds, either temporarily or permanently, to his office, such officer shall be competent to exercise all the powers and perform all the duties respectively conferred and imposed by this Act on such Magistrate or police office, as the case may be.

82. Written permissions to specify conditions, and to be signed.— (1) Any written permission granted under the provisions of this Act shall specify the period and locality for which and the conditions and restrictions subject to which, the same is granted, and shall be given under the signature of the competent authority and such fee then be charged therefor as is prescribed by any rule under this Act in that behalf.

(2) Any written permission granted under this Act may at any time be suspended or revoked by the competent authority, if any of its conditions or

restrictions is infringed or evaded by the person to whom it has been granted, or if such person is convicted of any offence in any matter to which such permission relates.

(3) When any such written permission is suspended or revoked, or when the period for which the same was granted has expired, the person to whom the same was granted shall for all purposes of this Act, be deemed to be without a written permission until the order for suspending or revoking the same is cancelled, or until the same is renewed, as the case may be.

(4) Every person to whom any such written permission has been granted, shall, while the same remains in force, at all reasonable time, produce the same, if so demanded by a police officer.

Explanation.— For the purpose of this section, any such infringement or evasion by, or conviction of a servant or other agent acting on behalf of the person to whom the written permission has been granted, shall be deemed to be infringement or evasion by, or as the case may be, conviction of the person to whom such written permission has been granted.

83. Public notices how to be given.— Any public notice required to be given under any of the provisions of this Act shall be in writing under the signature of a competent authority and shall be published in the locality to be affected thereby, by affixing copies thereof in conspicuous public places, or by proclaiming the same with beat of drums, or by advertising the same in such local newspapers – English or regional language or Hindi – as the said authority may deem fit, or by any two or more of these means and by any other means it may think suitable:

Provided that the competent authority may, on being satisfied that it is in public interest to bring any regulation into force with immediate effect, make such direction or regulation without previous publication.

84. Consent of a competent authority may be proved by writing under his signature.— Whenever under this Act, the doing or the omitting to do or the validity of anything depends upon the consent, approval declaration, opinion or satisfaction of a competent authority, a written document signed by a competent authority

purporting to convey or set forth such consent, approval, declaration, opinion or satisfaction shall be sufficient evidence thereof.

85. *Signature on notices may be stamped.*— Every written permission, notice, or other document, not being a summons or warrant or search warrant, required by this Act, or by any rules thereof, to bear the signature of the competent authority, shall be deemed to be properly signed if it bears a facsimile of his signature stamped thereon.

86. *Prosecution of police officers.*— No court shall take cognizance of any offence under this Act when the accused person is a police officer except on a report in writing of the facts constituting such offence by, or with the previous sanction of an officer authorized by the State Government in this behalf.

87. *Prosecution for offences under other laws.*— Subject to the provisions contained in section 300 of the Code of Criminal Procedure, 1973 (2 of 1974) nothing in this Act shall be construed as preventing any person from being prosecuted and punished under any other law for anything made punishable by this Act.

88. *Summary disposal of certain cases.*— (1) A court taking cognizance of an offence punishable under sections 69 and 77 may state, upon the summons to be served to the accused person, that he may, by a specified date prior to the hearing of the charge, plead guilty to the charge by registered letter, and remit to the court such sum as the court may specify.

(2) Where an accused person pleads guilty and remits the sum specified in the summons under sub-section (1), no further proceedings in respect of the offence shall be taken against that person.

89. *Recovery of penalties and fines imposed by Judicial Magistrates.*— The provisions of sections 64 to 70 of the Indian Penal Code, 1860 (45 of 1860) and sections 386 to 389 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to penalties and fines imposed under this Act, on conviction before the Court:

Provided that notwithstanding anything contained in section 65 of the Indian Penal Code, 1860 (48 of 1860) any person sentenced to fine

under section 69 of this Act may be imprisoned in default of payment of such fine, for any period not exceeding eight days.

90. *Protection of action taken in good faith.*— No suit or other legal proceeding shall lie against the State Government, the State Police Commission or its members and staff, the Police Accountability Authority, its members, staff or Police Establishment Board or any person acting under the direction of the Commission or the Authority, in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

CHAPTER - X

Police Accountability

91. *Police Accountability Authority.*— The State Government may as soon as may be establish a State Police Accountability Authority (hereinafter referred to as “Authority”), comprising the Lokayukta, Goa, for the whole of the State:

Provided that if by the time of the coming into operation of this Act, the institution of the Lokayukta is not in position, the composition of the Authority, till such time the Lokayukta is appointed, may be such as may be notified by the State Government.

92. *The functions of the Authority.*— The functions of the Authority shall be as follows:

(1) The Authority shall forward for further action the complaints of misconduct received directly by it to the Director General of Police.

(2) The Authority shall enquire into allegations of “serious misconduct”, against police personnel in all ranks, either suo moto or on a complaint received from a victim or any person on his behalf.

Explanation.— “serious misconduct” for the purpose of this Section shall mean:— (1) Any malafide act or omission or commission by a police officer that leads to or amounts to:

(i) death in police custody; or

(ii) grievous hurt in police custody, as defined in section 320 of Indian Penal Code, 1860 (45 of 1860); or

(iii) rape or attempt to commit rape in police custody; or

(iv) land/house grabbing by police personnel;

(v) extortion by police personnel;

(vi) any other offence for which the maximum punishment prescribed in law is ten years or more;

(3) The Authority may also inquire into any other case referred to it by the Director General of Police or the State Government if, in the opinion of the Authority, the nature of the case merits an Independent Inquiry.

(4) The Authority may also perform such other functions as may be prescribed.

93. Powers of the Authority.— In the cases directly inquired by it, the Authority shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 (Central Act No. 5 of 1908) when trying a suit, in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents;

(c) issuing commission for examination of witnesses; and

(d) any other matter as may be prescribed.

94. Reports of the Authority.— (1) The Authority shall prepare an annual report at the end of each financial year, inter alia containing;

(a) the number and type of cases of 'serious misconduct' inquired into by it;

(b) the number and type of cases of misconduct referred by it to the Director General of Police;

(c) the number and type of cases including those referred to in (b) above in which advice or recommendation was made by it to the police for further action;

(d) the identifiable pattern of misconduct on the part of police personnel in the State;

(e) recommendations on measures to enhance police accountability.

(2) The annual report of the Authority shall be laid before the State Legislature. The report shall be a public document, made accessible to the public

95. Decisions and Recommendations of the Authority.— (1) In the cases directly inquired by the Authority, it may, upon completion of the inquiry, communicate its findings to the Director General of Police and the State Government with a recommendation to:—

(a) register a First Information Report; and/or

(b) initiate departmental action based on such findings, duly forwarding the evidence collected by it to the Director General of Police/State Government. Such recommendations of the Authority shall be binding, unless the State Government for reasons to be recorded in writing disagreed with such recommendations:

Provided that the Authority, before finalizing its own opinion in all such cases shall give the Director General of Police an opportunity to present the department's view and additional facts, if any, not already in the notice of the Authority:

Provided further that, in such cases, the Authority may review its findings upon receipt of additional information from the Director General of Police that may have a material bearing on the case.

(2) The Authority may also recommend to the State Government payment of monetary compensation by the Government to the victims of the subject matter of such as inquiry.

96. Rights of the Complainant.— (1) The complainant may lodge his complaint relating to any "serious misconduct" on the part of police personnel with either the departmental police authorities or with the Authority:

Provided that no complaint shall be entertained by the Authority if the subject matter of the complaint is being examined by any other commission, or any court.

(2) In cases where a complainant has lodged a complaint with the police authorities, he may inform the Authority at any stage of the departmental inquiry about any undue delay in the processing of the inquiry.

(3) The complainant shall have a right to be informed of the progress of the inquiry from time to time by the inquiring authority (the concerned police authority or Accountability Authority). Upon completion of inquiry or departmental

proceedings, the complainant shall be informed of the conclusions of the same as well as the final action in the case at the earliest.

(4) The complainant may attend all hearings in an inquiry concerning his case. The complainant shall be informed of the date and place of each hearing.

(5) All hearings shall be conducted in a language intelligible to the complainant. In a case where hearings cannot be conducted in such a language, the services of an interpreter shall be requisitioned if the complainant so desires.

(6) Whereupon the completion of the departmental inquiry, the complainant is dissatisfied with the outcome of the inquiry on the grounds that the said inquiry violated the principles of natural justice, he may approach the Authority for appropriate directions.

97. *Funding.*— The State Government shall ensure that adequate funds are provided to the Authority for the effective performance of its functions by way of separate component in appropriate major head of the State Budget as the Government may decide.

CHAPTER - XI

Miscellaneous

98. *Persons aggrieved may apply to State Government to annul, reverse or alter any order.*— In the case of any order made by the State Government under an authority conferred by this Act and requiring the public or a particular class of persons to perform some duty or act, or to conduct or order themselves or those under their control in a manner therein described, it shall be competent to any aggrieved person to make a representation to the State Government to annul, reverse, or alter the aforesaid order.

99. *Power to make Rules.*— (1) The State Government may make rules for carrying out the purposes of this Act.

(2) All rules made under this Act shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which they are so laid, or of the session immediately following, the House of the State Legislature makes any modifications in any of such rules, or resolves that any such rule

should not be made, such rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

(3) Every rule made under this Act shall be published by the State Government in the Official Gazette.

100. *Power to remove difficulties.*— (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by notification in the Official Gazette, make such provisions, not inconsistent with this Act, as it deems necessary or expedient for removing the difficulty:

Provided that no order under this section shall be made after expiry of three years from the date of the commencement of this Act.

(2) Every notification issued under this section shall, as soon as may be after it is issued, be laid before the House of State Legislature.

101. *Repeal and Saving.*— (1) Save as otherwise provided in this Act, The Indian Police Act, 1861, the Police Act, 1888 (Central Act No. 5 of 1861) and the Madras District Police Act, 1859, in its application to the State of Goa are hereby repealed.

(2) Notwithstanding such repeal, anything done or action taken or purported to have been done or taken (including any rule, notification, inspection order or notice, direction, delegation made or issued, or any appointment, confirmation or declaration made or any licence, permission, authorization granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force unless and until superseded by anything done or any action taken under this Act.

Statement of Objects and Reasons

1. In this State the Police Force have been functioning under the Police Act, 1861, the Police Act, 1888, and the Madras District Police Act, 1859 which have been extended to the State when we were a Union Territory.

2. In the absence of a comprehensive Legislation on the subject and with ever increasing pressure on the Police to take

immediate action to prevent disturbance of the public peace and tranquility, a need has been felt to enact a Legislation to arm the Police Force with legal provisions to enable them to handle all situations which may lead to disturbance of public peace or tranquility and also enable the Police to take action in cases of public nuisance or acts causing annoyance to public.

3. There are many petty offences for which summary action is required to be taken by the Police. In the absence of a comprehensive Legislation with enabling provisions the Police Force will not be able to act in such cases.

4. The bill seeks to achieve the purpose.

Financial Memorandum

No financial implications are involved in the present Bill.

Memorandum Regarding Delegated Legislation

Clauses 3, 18, 19, 20, 22, 29, 30, 33, 37, 40, 47, 48, 49, 50, 53, 57, 58, 60, 62, 64, 63, 92, 93, 99 enable framing of Rules for the purposes of the Act. Thus delegated are of normal character.

Porvorim-Goa. Shri RAVI S. NAIK
Dated:- 25-8-2008. Home Minister

Assembly Hall, (R. KOTHANDARAMAN)
Porvorim-Goa. Secretary to the Legislative
Dated:- 25-8-2008. Assembly of Goa.

Department of Power

Office of the Chief Electrical Engineer

Notification

CEE/Accts-4 (Bud)/Part file/2469

The Government of Goa is pleased to formulate the following scheme:

1. *Title of the Scheme.*— This Scheme shall be called the “Scheme for Infrastructure Development through electricity duty.”

2. *Period of Operation.*— The Scheme will be operated from the Financial Year 2008-09

3. *Objective of the Scheme.*— The Objective of the Scheme is to raise a fund through levy of

electricity duty and set aside the same specifically for utilization for development of the Power Infrastructure in the State.

4. *Power Infrastructure Development covered under the Scheme.*— The present maximum demand of the State is of the order of 410 MW. As per the 17th Electricity Power Survey conducted by the Central Electricity Authority, the maximum demand could reach 721 MW by 2011-12 and 1500 MW by 2020-21. In order to cater to the anticipated load demand, as well as to provide power to the consumers in the State, it is necessary to:

a) Upgrade and strengthen the interstate lines feeding power to Goa.

b) Ensure adequate transformation capacity at 220 KV, 110 KV and 33 KV levels as well as adequate transmission and sub-transmission capacities by suitably upgrading the transmission and sub-transmission network in the State.

As the process of building up of the transmission and sub-transmission network within the State, particularly considering that a lot of infrastructure has crossed its life, involves huge amount of investments, which cannot be met from the normal Budgetary Outlay, the Government of Goa, has decided to levy Electricity Duty on consumption of electricity by various category of consumers through the Goa Electricity Duty (Amendment) Act, 2008 notified vide Notification No. 7/8/2008-LA dated 7th May 2008. The Government has decided that the revenue generated through levy of Electricity Duty shall be utilized for the development and upgradation of Power Infrastructure in the State of Goa.

5. *Constitution of the Electricity Development Fund (EDF).*— The EDF will be constituted in the Public Account of the State and classified under the Head: J-Reserve Funds, (b) Reserve Funds not bearing interest, 8229- Development and Welfare Funds, 00-110-Electricity Development Fund, 01-Electricity Development Fund, in the accounts of the State Government concerned and will be utilized as per the provision of paras 6 to 8 of the Scheme.

6. *Source of Funding for EDF.*— The amount collected by way of Electricity Duty under the specific Receipt Head shall be accounted separately in the Estimate of Receipt Head under

0801-05-101-05 and transferred to the fund under 8229-Development and Welfare Funds, 00-110-Electricity Development Fund, 01-Electricity Development Fund. The Department shall reconcile the revenue collected and transfer the same to EDF on monthly basis by debiting the same to the Expenditure Head “4801- Capital Outlay on Power Projects, 05-Transmission & Distribution, 800-Other Expenditure, 02- Infrastructure Development through Electricity Duty (Plan)”, by the 15th of the succeeding month. No other expenditure to be booked against the Budget Head “4801-Capital Outlay on Power Projects, 05-Transmission & Distribution, 800-Other Expenditure, 02-Infrastructure Development through Electricity Duty (Plan)”.

7. *Operation of EDF:*— The Department shall undertake Infrastructure Development works as advised by the Technical Advisory Committee and approval by the Government, to the extent of Funds available under EDF. For this purpose the Department would have to take all the necessary approval like expenditure sanction including approval of EFC and GSWB, wherever necessary. All codal formalities are to be followed for execution of works as envisaged under GFR and any other procedure put in place by Government from time to time.

8. *Technical Advisory Committee:*—

(a) Composition of the Technical Advisory Committee:

- | | |
|--|----------------------|
| i) Chief Electrical Engineer ... | Chairman |
| ii) Superintending Engineers of the Respective Circles | ... Members |
| iii) Joint Director of Accounts | ... Member |
| iv) Executive Engineer (Plg.) | ... Member Secretary |

(b) Functions of the Committee:

(i) The Technical Advisory Committee shall recommend the Developmental Schemes proposed to be carried out under the EDF to the Government.

(ii) Only such works which have been recommended by the Technical Advisory Committee of the Department and approved by the Government shall be undertaken under this Scheme, and the amount for execution of such works shall be spent from the EDF.

(iii) The Committee shall monitor the utilization of the amount kept under the disposal of the Government in respect of the

EDF and ensure that the money is utilized for the purpose for which it is meant.

9. *Unspent Balance of the Funds:*— The unspent balance of EDF at the end of each financial year shall be the opening balance for the subsequent year.

10. *Accounts and Auditing:*— The Accounts of the fund and its utilization shall be verified by the Accountant General In-charge of the Accounts of the State in the normal course.

By order and in the name of the Governor of Goa.

Nirmal Braganza, Chief Electrical Engineer & Ex-Officio Additional Secretary.

Panaji, 29th August, 2008.

Department of Printing & Stationery

Government Printing Press

Order

No. 13/7/07/STN-GPP

It has been observed that the Departments are submitting frequently requests to publish orders, notifications in Extraordinary Gazettes. Extraordinary Gazettes are required to publish only in cases of dire urgency, hence Government has decided that only following matters will be published in Extraordinary Official Gazettes.

- 1) Constitutional Orders like Ordinances, etc., issued by the President of India, Governor of Goa, under the provisions of Constitution of India.
- 2) Act, Rules, which are giving financial impact on a State Treasury for increasing/ decreasing the revenue taxes/fees with immediate effect.
- 3) Orders issued by the Election authorities i.e. Chief Election Commission, State Election Commission and Returning Officers.

By order and in the name of the Governor of Goa.

N. D. Agrawal, Director & ex officio Joint Secretary (Printing & Stationery).

Panaji, 28th August, 2008.

Notification

No. GPS/5-14/Revised-Rates/1363

In supersession of all earlier orders/notifications issued on this behalf the Government has revised, the subscription rates of the Official Gazettes Series I, II & III w.e.f. 1st October, 2008 are as below.

Subscription Rates

	All 3 Series	Series I	Series II	Series III
	Rs. P.	Rs. P.	Rs. P.	Rs. P.
For any quarter	500/-	250/-	200/-	100/-
(Postage)	60/-	15/-	15/-	15/-
For half year	1,000/-	500/-	400/-	150/-
(Postage)	60/-	30/-	30/-	30/-
For any period exceeding 6 months upto one year...	2,000/-	1,000/-	800/-	300/-
(Postage)	110/-	60/-	60/-	60/-

The revised rates are not applicable to the subscriber, who has already paid the subscription for the whole year 2008-09. However, the revised subscription rates will be applicable to those who subscribes for the half year or quarter starting from 1st October, 2008.

By order and in the name of the Governor of Goa.

N. D. Agrawal, Director & ex officio Jt. Secretary
(Printing & Stationery).

Panaji, 2nd September, 2008.

Public Notice

Public is hereby informed that the Official Gazettes – Series I, II & III are available on Website www.goagovt.nic.in/gazette.htm